MINUTES OF EVIDENCE

TAKEN BEFORE THE

SELECT COMMITTEE OF THE HOUSE OF COMMONS

ON THE

AFFAIRS

OF

THE EAST-INDIA COMPANY

FEB. 28th to JULY 9th, 1832.

IV.

Judicial.

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LIST OF WITNESSES.

MINUTES OF EVIDENCE.

Martis, 28° die Februarii, 1832.

The Right Hon. ROBERT GRANT in the Chair.

28 February 1832.

Rich. Clarke, Esq.

RICHARD CLARKE, Esq. called in, and examined.

1. WHAT is your profession?—I am a retired Civil Servant of the East-India Company, under the Madras presidency.

2. How long did you serve the Company?—From the season of 1804.

3. In what departments did you principally serve?—In the Sudder Adawlut, and part of the time in the Board of Revenue, of which I was junior member when I left Madras. I was also Tamul translator to Government, and *ex officio* a member of the Board for the superintendence of the College.

4. During what period of the service were you in the Sudder Dewanny Adawlut?—I was in the Sudder Dewanny Adawlut from 1814 to 1820, as deputy reigstrar and acting registrar.

5. In filling those situations, you have of course turned your mind to the subject of the judicial administration of the Company?—I have.

6. As registrar of the Sudder Dewanny Adawlut, you carried on correspondence with the different civil courts of justice, during that time; did you not?—Yes; officially, under the instructions of the judges.

7. Had you opportunities of being acquainted with the course of proceeding in those courts?—I had.

8. Can you state what is the course of education pursued in the college of Madras, during the period of qualifying writers for their situations in the service?—My knowledge on that subject arises from my being an *ex officio* member of the college board of Madras, from 1815 to 1826, when I left India. The writers, on their arrival at Madras, were placed under the general supervision of the college board: their first duty was to qualify themselves in the languages of the country, and for that purpose they were required to select one of the vernacular languages of Hindoo origin; the Tamul, or the Teloogoo or the Canarese, or the Malayalim or the Mahratta; and as a second language they were permitted to take either the Persian or the Hindostanee: they were required to study two languages. The increase of their allowances depended upon the progress they made in their studies, as reported by the college board to the Government. Besides the study of the languages, they were also required to inform themselves on the general principles

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of the regulations enacted by the local government; and they were examined in their progress as well in the languages as in the regulations, by members of the college board. The regular examinations were half-yearly, but special examinations were also allowed when students deemed themselves qualified to apply for the increase of allowance granted for a certain standard of acquirement in the languages. When a student could translate from and into his first language, with correctness and facility, and could hold a conversation with natives upon any subject proposed to him, and could read official papers put into his hand, and had acquired a knowledge not quite so extensive of his second language, he was reported by the board as qualified to enter upon the duties of the public service.

9. Are any means taken to qualify those who are to take judicial situations?—No other but causing them to read the regulations of the government in the college, and examining them thereupon.

10. You were understood to say that some acquaintance with the regulations was required of all students in the college; is more required of those who may fill judicial situations than of others?—There is no difference made in the course of education of the students, with reference to their future employment in any particular branch of the service.

11. Is there any and what principle upon which the servants who are to fill judicial situations are selected?—They are generally selected for promotion with reference to their standing in the service, as entitling them to a superior salary; the appointment to office is in the discretion of the Governor in Council.

12. May they be appointed to a judicial situation immediately on leaving the college?—They may be appointed to ministerial offices in the courts; they may be appointed registrars, but they seldom are so. There is no rule prescribing any course of education, or any course of promotion for servants, in regard to judicial offices. When a writer is reported qualified for the public service he is eligible, according to the discretion of Government, either to the revenue or the judicial department; he would enter upon those duties in the inferior grades: if he chose the judicial department, he would probably be appointed an assistant either in the zillah or provincial court, or he might be appointed a registrar; his being so would depend generally upon the number of servants who were at the disposal of the Government to fill the different offices of administration at the period. As assistant, he would perform duties both on the criminal and on the civil sides. An assistant has no judicial functions to perform, he is merely a ministerial officer; but the registrar of a zillah court has jurisdiction as a judge to a certain amount. Under the government of Sir Thomas Munro it was the practice to appoint all young men, on their quitting college, to situations in the revenue department in the first instance: there is no rule of promotion established by the Government, nor is any standard of judicial qualification required, nor does any examination take place on the appointment of civil servants to judicial offices after quitting the college.

13. When does the Government take any and what means of ascertaining the qualifications of those who are promoted to judicial situations?—That is a matter which rests entirely in the discretion of the Governor in Council.

14. What opportunities has the Government of knowing the qualifications of the servants to execute judicial offices?—They have the general means of estimating the intelligence

intelligence of a civil servant from his public acts, as recorded in the proceedings of the courts, or his correspondence with the Government.

15. Will you explain what you mean by the statement that, under Sir Thomas Munro, the writers began in the revenue department?—Sir Thomas Munro was of opinion, that more extensive general knowledge was to be obtained by service in the revenue than in the judicial department; and as the civil servants were eligible to any office under the Government, he sent them into the revenue department first, as best qualifying them for any situation to which they might be afterwards appointed.

16. At what age do the writers generally leave college at Madras?—About 20; they come out generally about 18 or 19, and they remain in college about one or two years.

17. How early is the age at which they enter on any judicial functions?—According to the course of appointment adopted of late years, a civil servant was generally appointed registrar after about three years' service in the revenue department.

18. Did he ever assume any judicial functions before he had been employed a certain number of years in the revenue service at Madras?—According to the common course of practice of late years, a man was not appointed registrar until he had served three years in the revenue department.

19. Can you state the age at which a person gets to the office of registrar?—About 23.

20. During the time he is in college, are there no books which will give him information respecting the law or the judicial system, except the Regulations?—He is not required to study any books for that purpose; those who have made progress in Sanscrit at Haileybury College generally have read the Institutes of Menu; that is one of the text-books of Hindoo law.

21. The moolavie, or Mahomedan law expounder, is an officer of the college, is he not?—Yes.

22. Is there a Hindoo pundit and an expounder of Hindoo law also attached to the college?—Yes; there are also classes of native students in Hindoo and Mahomedan law.

23. The writers do not avail themselves of that means of instruction?—They are not required to do so; the instances of their doing so are rare.

24. You know that there are translations of Menu and several other writers on the Hindoo law?—Yes, there are.

25. And also of several of the authors and writers on Mahomedan law published?—Yes, there are.

26. It is no part of the instructions given to them to obtain information by the reading of those books?—It is not.

27. Will you explain how it happens that there is no instruction in matters of law in the college?—When the civil servants of the three presidencies went to Calcutta to qualify themselves there for the duties of the public service, which was the case under Lord Wellesley's administration, they did study the laws; but after the abolition of that college, the only branch of study required to be carried on in India was that of languages. The college at Madras was established in its best form,

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after several experimental plans, on a plan formed about the year 1810 by the late Mr. Ellis, of the Madras civil service, who was a very excellent oriental scholar, and also himself well versed in the laws. One of the declared objects of the institution was to have efficient native teachers to instruct the civil servants in the languages of the country; their qualifications were to be ascertained by the board, which was formed of the translators to Government, and of some other civil servants of the establishment who were conversant with the Indian languages. Mr. Ellis was the first senior member or president. It was the duty of the board also to inquire into the debts incurred by young civil servants; a declaration upon honour was required from each at the half-yearly examination, which was of course a confidential communication, stating whether he was in debt, and the amount. By that system the board at Madras were enabled greatly to check the incurring of debt, and the satisfactory result was that the greatest portion of students quitted the college free from debt: in no case, while I was a member of that board, did it ever happen that a student in the college owed more than 5,000 rupees.

28. It is understood that the college of Lord Wellesley was intended as a seminary for the general instruction of all the civil servants under the three presidencies, both in the oriental languages and in law, as well as other departments of knowledge?—Yes.

29. And that the system the Company substituted was that of instruction in this country previously to the going out as writers, in law and in other departments of knowledge which might be requisite; and that having given the writers the rudiments of oriental languages in this country, the college in Bengal should be employed to perfect them in those languages: was the college at Madras formed after that time, and was it modelled upon the plan of the reduced college at Calcutta?—There was a succession of plans at Madras, the first of which were very simple; the last scheme was adopted on a model sketched out by Mr. Ellis.

30. In the functions of criminal justice, at what age are the writers promoted to situations in which they exercise criminal jurisdiction to any extent?—Since the transfer of the office of magistrate to the collector, which took place in 1815, a writer, immediately upon his appointment in the revenue department, was liable to be called upon to execute the duty of magistrate, as the collector might delegate to him the whole of his magisterial authority, or such part as he might deem it expedient to entrust to him.

31. What extent of power would that imply?—A power of imprisonment and corporal punishment within the limits prescribed by the regulations.

32. He might stand in the place of the magistrate almost immediately after his leaving college?—Yes.

33. What is the station at which he might ultimately arrive as a criminal judge?—As a "criminal judge," technically, his duties would be attached to the office of zillah judge.

34. A magistrate has not the power of life and death?—No; nor the criminal judge. The zillah judge is the criminal judge; his power extends to punishment to a limited extent. The next court in gradation is the provincial court, which, in its criminal character, is a court of circuit for the trial of all greater offences; they hold

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hold their sessions at the zillahs within the range of their jurisdiction. All capital cases must be referred for confirmation by the court of circuit to the Sudder Fouzdary Adawlut, before they can be carried into execution.

35. At what period of their age or service do writers attain to those high judicial situations?—A civil servant is seldom appointed a zillah judge before he has served from 12 to 15 years, nor generally to the provincial court until after the further service of six or eight years.

36. Was it the principle and general practice of the Government that individuals should be promoted to those high stations according to the character for ability, knowledge and propriety of conduct they had established in situations of a subordinate kind?—The appointments to office rested entirely in the will of the Governor and Council; I should say that during Sir Thomas Munro's government, the more able public servants were appointed to the revenue department.

37. How far was the character acquired in the inferior judicial situations considered as establishing a title to advancement?—It was generally so considered, as far as the exigencies of the service would permit.

38. Do you mean to imply that there were not a sufficient number of persons?—At times there was a bare sufficiency; there was no special qualification for the judicial line, neither was the succession of appointment by degrees in the judicial department under any existing law.

39. Was there any rule that made it necessary that a person should pass through the different ranks of zillah judge and circuit judge before he arrived at the highest?—No.

40. Then it was possible that very soon after he left college he might be appointed to a high situation?—No; the high situations, with high salaries, cannot be held by a junior servant.

41. Was there any other rule of succession, except that a certain standing was requisite to the filling the places of a certain salary?—None.

42. Were the emoluments of a judicial situation such as to tend to lead men of great ability to direct their attention to those situations, in preference to situations in the revenue or other departments?—Not for some years past; the most lucrative line of promotion latterly was the revenue, and it offered the greatest number of situations.

43. Was there anything in the rank or station a judge held that would induce a man to take that situation rather than that in another department?—No.

44. Have you turned your attention to the subject how far it would be possible or desirable to provide means for the completing the instruction of those servants who were to fill judicial situations?—I think that such a measure is essential to the efficiency of the courts, and therefore highly desirable; the mode of effecting that object is one on which I am not prepared to speak.

45. In your opinion, is the instruction in the Institutes of Menu, or any of the books of the Hindoo law, advantageous?—The courts are called upon to administer to the Hindoos and to the Mahomedans respectively their own laws, and are required by the regulations to submit to the native law officers, who are appointed to their courts, the questions that are necessary to elicit an opinion from them on each point of law that may arise. The law officer, in his reply, generally refers to standard

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standard works, the authority of which is admitted in the province in which they are cited. The most important works on inheritance and adoption, which are two of the principal subjects of litigation in the Indian courts, have been very ably translated into English; and there are other works also translated to which reference may be had. A considerable knowledge of the principles of Hindoo and Mahomedan law, in most of the ordinary subjects of litigation, may now be attained by the study of English translations and treatises. The knowledge of the native languages, which civil servants are now required to attain, might enable them to satisfy themselves that the quotations of the Hindoo lawyers were correctly made. A knowledge sufficient to enable a judge to check the officers, and to prevent their imposing erroneous opinions or greatly misleading the court, would seem to be absolutely necessary for the due performance of the duties of the judicial office.

46. Do you think that should be added to the present system of instruction in languages?—Yes, certainly.

47. How far are the European judges dependent upon the native law officers in the administration of justice?—They could not give judgment, in civil cases, against the opinion of those officers, except on very solid grounds. Generally speaking, they are considered as bound by the opinion of the native law officers.

48. Do the native law officers give their answers, as to the law, in writing, so as to form part of the record?—Always.

49. Are the judges sufficiently acquainted with the principles of Hindoo law to exercise a check and control over the opinions of the Hindoo lawyers?—Generally speaking, at Madras, I should say they are not.

50. Will you state more particularly how the law officers are appointed, how they are qualified for their duties, and in what manner their qualifications are ascertained?—Since the establishment of the college of Fort St. George, there has been a class of native students of Mahomedan law, and another of Hindoo law, under the Sanscrit and Arabic head masters respectively. By a Regulation of the year 1817 it was provided, that no law officer should be appointed excepting after examination by the college board, aided by the native professors of Hindoo and Mahomedan law attached to the college, and by the pundits and cauzeys of the Sudder Adawlut: under this system provision has been made for a sufficient number of learned Mahomedan and Hindoo lawyers to fill those offices. Persons who had qualified themselves by study in the interior were also permitted, on coming to Madras, to be examined by the college board, and were entitled, on proof of their qualifications, to a like certificate with those who had been educated wholly in the college.

51. Are those Hindoo law officers generally well informed upon the subject of the law?—I think they are, and they are remarkably acute in applying their knowledge.

52. Those officers are in the nature of assessors to the judges?—Yes, so far as delivering opinions on points of law referred to them.

53. What is the profession of a native pleader?—The native pleaders conduct the suits of the clients before the zillah and provincial courts and the sudder adawlut; they draw all the pleadings and examine the witnesses.

54. Are they appointed to the office?—They have a sunnud or patent, authorizing them to practise; it is one of the duties of the college board to prepare vakeels

vakeels or native pleaders, who are, however, not required to have so thorough a knowledge of the native law as those who are candidates for the offices of cauzey or pundit; but they are examined in the native law, and are further required to have a sufficient acquaintance with the regulations passed by the Government. Individuals of this class, when found duly qualified, receive a certificate from the college board, upon producing which before the sudder adawlut, they receive the sunnud or diploma of appointment, in virtue of which they are allowed to practise in any court they may select. The object of these arrangements was as much as possible to assimilate the native to the European bar, leaving it to the clients to make their own selection of their law advisers.

55. Do they address the court in oral argument?—No; the pleadings and motions are all submitted in writing; they examine witnesses.

56. Is there any regulation as to the amount of their fees?—Yes; their fees are all prescribed by Regulation; their fees are a per centage on the amount litigated.

57. Are the vakeels generally very good lawyers?—Many of them are very acute reasoners, and some are good lawyers.

58. Do they discharge their duties generally well?—Generally; the vakeels appointed of late are more able than those formerly admitted, owing to their better education.

59. Are they ever promoted to be cauzeys or pundits?—Some of the Hindoo vakeels have been appointed pundits, but before obtaining such an office they would be required to pass another examination, and to obtain a certificate of higher qualification.

60. Does the principle of payment by the amount litigated arise from the positive regulations of the Government?—It is prescribed in the Regulations that the vakeel's fee shall be at a certain rate per cent. The fees are paid into court at the commencement of the suit by the suitor, and paid over to the vakeel at the close of it.

61. Has the institution of vakeels been found to be of great utility in the administration of justice?—I am of opinion that it has; their utility must depend upon their skill and knowledge; and the better education given them of late years, and their greater experience of the business of the courts, has much improved these qualifications in comparison with what they were on the first institution of the courts of judicature.

62. What is the nature of the pleadings in those courts?—The first pleading is the plaint, which developes the case of the plaintiff; this is answered by the defendant in his answer, which, when well drawn, states the grounds of the defendant's objections to the case of the plaintiff; the regulations provide for a reply and a rejoinder, and in some special cases for supplemental pleadings. There is great variety, both in the clearness and in the length of the pleadings, depending of course upon the sense and judgment of the pleader; some of the pleadings are exceedingly well drawn.

63. Suppose a question of law arises in the pleadings, is that referred to the judge?—The judge refers the question of law to the law officer, after having gone through the pleadings and heard the evidence, and before passing his decree.

64. Are the pleadings analogous to equity pleadings in this country?—The defendant is not upon his oath.

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65. Are the law and facts blended in the same pleadings?—They are.

66. The judge having consulted the law officers on questions of law, decides upon the whole of the law and the fact of the case?—He does, reciting at full length in his decree the substance of the pleadings, the evidence taken, the reference, if any, to the law officer, with his answer, and concluding with the grounds of his own decision.

67. Are there any fees for the drawing the decrees and other official reports?—The copies of decrees required to be given to each party are written on stamped paper of a certain value; if the parties require additional copies they may have them, by paying for them on the stamps.

68. From what persons do the pundits and cauzeys respectively come?—The pundits are all Brahmins, the moolavies and cauzeys are generally of highly respectable Mahomedan families.

69. Have you seen much of the native judges?—I have not seen the courts of the district moonsiffs in operation, as I have never served in the interior, but I have known many natives who have been appointed to those situations; it was not uncommon of late for persons who had qualified themselves either for law officers or for vakeels, to solicit and receive appointments as district moonsiffs; but any respectable native of known qualifications, and without any particular examination, might be appointed a district moonsiff. The sudder aumeens, who are the Mahomedan and Hindoo law officers of the zillah and provincial courts, also exercise judicial functions, and have jurisdiction to a limited extent in cases referred to them by the zillah judge.

70. Do the Mahomedan and Hindoo law officers sit together in the court, or constitute separate courts?—They sit separately.

71. Describe the distinction between the court of sudder aumeens and the court of moonsiffs?—The sudder aumeens can only receive such suits as are referred to them by the zillah judge, but the district moonsiffs have original jurisdiction to an amount limited by the regulations.

72. Is there any appeal from the decisions of either?—Yes, to the zillah judge.

73. Are such appeals frequent?—I believe that no very great proportion of decisions of sudder aumeens or district moonsiffs are appealed.

74. Do you conceive that the appointment of native judges has, upon the whole, answered in such a manner as to justify more extensive employment?—I think fully so, so long as there is an appeal from their decisions to a tribunal at which an European judge presides.

75. Supposing there were no such appeal, what do you conceive would be the consequence?—I think that the decisions of a native court, whose decrees were final, would not be confided in by the natives themselves in any but small suits; and I think that in the very imperfect state of morality among the natives of India, there is not at present sufficient security for the pure administration of justice uncontrolled.

76. Is it not possible that the very circumstance of reposing more confidence in them would tend to improve them?—I do not see how that effect can be produced, while they are open to so much temptation, and while their principles are so lax.

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77. In point of fact, do you conceive the liability to an appeal operates as a very considerable check on the conduct of the native judges?—Certainly, a most important check. 28 February 1832. *Rich. Clarke, Esq.*

78. Is there not a class of causes in which there is no appeal?—The decree of the district moonsiff is final, I think, as far as 20 rupees.

79. In the decisions where their decree is final, are there complaints made of those decrees?—I believe not: native judges are liable to be sued civilly, and prosecuted criminally, for corruption or bribery.

80. Do you recollect at what period the authority of these judges was introduced to the extent to which it now exists?—There had been for many years native commissioners, not altogether so respectable as the present district moonsiffs. The number of these judges was considerably increased, and their jurisdiction was extended, by regulations passed in the year 1816.

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The Right Hon. ROBERT GRANT in the Chair.

RICHARD CLARKE, Esq. again called in, and examined.

81. HAVE you ever turned your attention to the question in what manner the Company's servants to be employed in judicial situations may best be qualified for the discharge of that duty?—I have considered the subject a little since I had the honour of being before the Committee last. In comparing the course of education laid down in the regulation for the college at Calcutta, under my Lord Wellesley, with the systems now pursued, it appears that every branch of knowledge there taught has been provided for either in England or in India, excepting the study of Hindoo and Mahomedan law. General instruction in law is given at Haileybury college, but it is, I apprehend, merely in the rudiments; and it is known that in every branch of study there is great variety of proficiency and attention exhibited by the students, consequently a considerable number quit the college but slightly imbued with even those general principles of the administration of justice; but on the principles of the Hindoo and Mahomedan law, I believe no particular instruction is given at the East-India college. It is also of great importance towards fitting a man for the discharge of the higher judicial functions, that he should acquire, by due preparation, the power of discriminating between truth and falsehood in taking evidence, and certain fixed principles which may generally govern the admission of evidence. For want of practice in these particulars the Company's servants are generally left to form their individual opinions of the mode of determining on the credibility or otherwise of the evidence before them. I think it is owing to this want of experience, and of training to this part of the judicial duty, that complaint is so frequently made of the difficulty of ascertaining the truth, and distinguishing 6 March 1832. *Rich. Clarke, Esq.*

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distinguishing between truth and falsehood in suits between natives. To remedy these evils it would appear necessary that more detailed instruction in law should be given, and that the civil servants should have the opportunity of forming themselves for the administration of the higher judicial functions by witnessing the proceedings of regular courts. The judges of all the Company's courts in India, from the lowest to the highest, have been equally left to fit themselves for the discharge of their functions, and consequently there is no greater certainty of acquiring valuable experience in the higher than in the lower courts. It is one of the duties of the court of Sudder Adawlut to regulate the practice and proceedings of the lower courts, and this they do by written orders upon points referred for their direction, or upon any subject that arises in the course of the proceedings which come before them, and which may seem to require interference on their part to correct errors or to ensure consistency. But a very small portion of the Company's servants have an opportunity of witnessing this part of the proceedings of the Sudder Adawlut, as applicable to the general administration of justice; and the mere occasionally reading of an order will convey little general knowledge to the reader of it. If the proceedings of the court of Sudder Adawlut were under the direction of judges more regularly trained in the study and practice of law, and if the proceedings before them were carried on by oral pleadings in the English language, considerable facility might be afforded for the practical study of the administration of justice to the Company's junior servants; and if examination in the laws which they are to administer were made to precede appointment to the office of judge, it does not appear impracticable to train the Company's servants for the discharge of judicial functions, even in the course of their service in India.

82. In what way are the proceedings of the courts made known to the sudder adawlut, so as to give them the opportunity of judging of them, and providing an uniformity of practice?—First, by appeals, in which every proceeding and order of the lower court is laid before the Sudder Adawlut in writing; secondly, by petitions presented to the Sudder Adawlut by parties who consider themselves aggrieved by any order or proceeding of the inferior court; and lastly, by examination of the periodical reports of suits decided by the lower courts, the review of which occasionally suggests doubts of the propriety of the proceedings in the courts below, when a reference is made to the inferior court for information and explanation.

83. Do you mean it is compulsory on the judges of the lower courts to make those periodical reports?—It is provided for by the regulations.

84. Have you had occasion to see that even the merely rudimental instruction in law which is acquired at Haileybury proves beneficial in framing the orders for judicial proceedings?—Certainly, in giving general principles of equity and justice. I have always found the judicial officers of the Company anxious to discharge their duty, not only with uprightness, but with great independence.

85. You say that the difficulty of discriminating between truth and falsehood in native suits arises partly from the want of proper instruction in those who have to judge; is it in any degree produced by the want of the quality of truth or veracity in the natives?—Undoubtedly, to a great degree. A native will in general give his evidence rather with reference to the consequences of what he may say to his own interest, than from any regard to its truth or falsehood.

86. Are

86. Are you aware that it has been urged as one reason for employing native juries and punchayets, that natives are much better able than Europeans to elicit truth from native witnesses?—I am aware that that is one of the reasons urged. There is no doubt that their more familiar acquaintance with the language and habits of their fellow-countrymen must give them a considerable advantage in the discernment of truth; but I think that generally, where the habit of examining evidence exists, as in the judges and counsel in the King's courts in India, the truth is generally arrived at.

87. You mean when natives are under examination?—When natives are under examination.

88. Do you mean to say, that the barristers and judges of the King's courts, though from their education less familiar with the habits of the natives than the Company's servants, yet are more successful in eliciting truth from native witnesses?—I think they are generally so, on the whole; that they are more certain of arriving at the truth.

89. Do you consider the experiment of employing punchayets, on the whole, as having failed or succeeded?—At Madras I believe it has entirely failed.

90. To what cause do you ascribe its failure?—To the unwillingness of natives to take upon themselves the trouble of deciding causes without remuneration, with the probability of bringing upon themselves the ill-will of the parties before them, and certain occupation of a great portion of their time in matters in which they have no personal interest; also to the want of confidence on the part of the natives in their decisions.

91. That is, you mean of native suitors?—Yes, of native suitors in the decision of punchayets.

92. Then how far do you think it would be possible to extend the use of native agency in the administration of justice in the Company's courts?—It appears to me that it might be done by associating natives with Europeans in the discharge of those duties: their assistance would be of great advantage as assessors or co-judges; and by being associated with European judges, they would acquire the habit of administering justice without being so much exposed to those temptations and to those influences which have been found generally to affect their conduct in proportion as they are vested with independent authority, and on the extent of which we possess probably less accurate information than on any other relation of the native character.

93. Do you think that the natives, by being employed in administering justice, would by degrees learn to act more independently than Europeans?—In order to the improvement of the native character, I think there is wanting a better moral principle in themselves individually than they are now found to possess, and a more powerful influence of moral opinion on the part of native society. At present their morality affords little internal control over their actions; it does not furnish them with a conscientious check on their conduct; and there is no control of public opinion acting upon them externally. Injustice or misconduct which should prove successful in making the fortunes of a native, would attach no disgrace to him in the estimation of his countrymen.

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94. How is perjury punished?—Perjury is punished under the Regulations, by imprisonment and hard labour; I am not sure whether by transportation, but by imprisonment and hard labour certainly.

95. Are prosecutions for perjury frequent?—Very frequent.

96. What is the effect upon the character of a native, on his having been prosecuted for perjury, and convicted?—If the man is of a character to which from rank or caste any degree of respectability or sanctity attaches, those qualities would not be affected by his punishment, in the minds of the natives. I believe that persons holding offices attached to temples have been viewed with equal reverence and treated with equal deference in regard to their spiritual authority, while under actual punishment for perjury.

97. And would it not operate as a stain upon them in society?—Not among themselves.

98. In the event of an increased introduction of Europeans, either for the purposes of trade or settlement, into the Company's territories, have you considered whether and in what way the judicial system of the Company must be altered to adapt it to the consequent state of things?—The question is a very difficult one, but I will endeavour to state what occurs to me. In the relations of commerce the dealings of the Europeans would be with the natives on the spot; it would seem necessary, therefore, that one law should exist, which should be equally administered to both: this would seem to render it necessary that the principle of legislation must adapt itself rather to the state of the European than of the native. The natives have been for centuries subject to despotic government: the laws enacted by the British Governments in India for the regulation of their servants, though in their general principle eminently equitable and just, have left more to the discretion of the local officers in the provinces than perhaps could be allowed if they had European settlers to deal with. The laws must be more definite and precise, and must be so administered as to ensure both efficacy and uniformity. The revenue laws, it would seem to me, must be drawn with great care and clearness, in order to avoid frequent collision between the European settlers and the officers of the Government; and being drawn by competent persons, must be administered with firmness and vigour. It appears to me, that since we are charged with the government of a country, the people of which have always been accustomed to the most submissive obedience to their rulers, and that submission having hitherto ensured the peace of the country, it is incumbent on us to protect our native fellow subjects from the evils that must necessarily arise, if contention between the Government and European settlers should be of frequent occurrence. An European, reckless of consequences and selfishly devoted to his own interests, might create such disturbance in a district, or might so impede the operations of the officers of Government, that the public administration would be almost at a stand: to guard against such an evil, it would appear necessary that a power of removal should be vested somewhere, either in the executive government, or, if it could be done, in courts of justice.

99. Would it be necessary in that case to alter the law of property, in order to render it uniform both to natives and Europeans?—Not the law of property, I should

I should think, which would always follow the law of the party sued in a court of justice.

100. Is not great inconvenience found to result from a rule which regulates the determination of suits by the law of the defendant, where the parties are of different nations or religions?—I am not aware of any practical inconvenience resulting from that rule: the laws of succession and inheritance of the Hindoo and the Mahomedan are so different from each other, and from the English law, that they must, it appears to me, exist separately; and I cannot conceive that we should be justified in refusing to either of the classes of our native subjects the succession to property according to that law which had governed it for so many centuries.

101. Supposing a case of contract, is there a difference in the systems of law?—There is; but it would be much more easy to assimilate the laws of contract, I should think, than those of succession. Indeed questions of contract in the Company's courts are generally decided on principles of equity and good conscience.

102. Supposing a case of cross suits, relating to the same subject-matter, would not there be a clashing of decisions?—I cannot exactly see how. I wish to add to a former answer, that one of the principal difficulties that would present itself to the entrusting natives with the administering of justice to any very great extent, singly, would arise from the character of the native code, which containing many admirable principles of justice, and exhibiting the only rules by which we can be guided in assigning property in succession, and determining on rights of adoption and some other points, have mixed up with those subjects much that is so absurd or so unjust that no Christian tribunal could administer it as a whole. But it would seem difficult to prescribe a limit to a native judge in the administration of his own law, and decisions passed by him might be of such a character as would exceedingly embarrass a court of appeal in disposing of them. If natives were admitted to sit with European judges, and to a certain degree under their control, this evil might be sufficiently guarded against, while the native would be thus admitted to a more liberal participation in the administration of justice, and would acquire habits of mind from the European judges which would probably have an extensive influence on his character, and through him, on those connected with him.

103. Since the natives do actually sit alone as judges in cases of small importance, is there any inconvenience found in those cases from the cause that you have last mentioned?—I believe not. Their jurisdiction has been hitherto considerably limited, not only in amount, but in the nature of the claims on which they were to adjudicate. They had greater jurisdiction in cases of personal than of real property.

104. You mean that the case has not been such as to involve in so great a degree the peculiarities of native law?—Generally not.

105. Might it not be possible to form some common course of instruction to which native judges, as well as Europeans, should be subjected?—The native judges of the principal classes, who have the highest jurisdiction, have generally been well trained to a knowledge of their own laws, including the law of evidence and logic. This last is one of the branches of the study of every native lawyer, and certainly makes them acute and sharp reasoners, though it is no part of the avowed object of that study to lead to the satisfactory ascertainment of truth, but rather to the ingenious

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nious defence of the proposition to be maintained. I should think the course of common study referred to might be practicable, but the effect of such a system would not develope itself immediately, it would need the operation of time. I am far from thinking the native character incapable, though it stands in need, of improvement. I think very highly of the natives, as diligent, acute, laborious, and anxious to acquire knowledge, and I think the extent of even their moral attainment fully equal to what might be expected from the institutions and habits of their country; but I do not think that they are at present in a state to be employed in responsible judicial functions without the supervision of Europeans.

106. Have you had an opportunity of seeing how far there is a general confidence in the decisions of the Company's courts?—I think there is a very general confidence in the integrity of the Company's judges, but not always in their skill. But there are among the Company's servants as many as under the circumstances could be expected, who have taken great pains in the acquirement both of general and of judicial knowledge. Still the circumstance that such qualifications are not examined into or required, and the frequent removals from one department of the public service to the other, have presented obstacles to the preparation of a sufficient number of persons to fill all the judicial situations existing at any of the presidencies, I believe; certainly under that of Madras.

107. Supposing a system formed for the instruction of the Company's judicial servants, should you contemplate it as a part of that system, that there should be a selection of persons for the judicial profession, according to the qualifications which they manifested?—I think there should; but as all the departments of the government must be filled out of the body of civil servants, it might occasionally occur, even under such a system, that a judicial office would require to be filled by one not so prepared. There would seem no objection to the employment of persons qualified for judicial office, in the other departments of the service.

108. Do you mean that those persons under education, found unfit to be judges, should be promoted in other lines?—Persons whose turn of mind or inclinations would not lead them to qualify for judicial situations, might nevertheless be very valuable officers in other departments.

109. Could there be any plan by which you should have a larger number of persons, out of which to select those who were to be employed, than the number of judicial places to be filled; and if any such plan be possible, should it be carried into effect in this country or in India?—As the number of eligible persons is generally fully equal to the number of all the situations under the government, and as the judicial situations are not a very large portion of those appointments, I should think it would be practicable to qualify a sufficient number of civil servants at each presidency, out of whom to select for the higher judicial situations. The legal education of civil servants in England, before quitting the country, should be carried to a greater extent perhaps, by affording some immediate encouragement or reward to such as should apply themselves diligently to it. And if the proceedings, not only in the Sudder Adawlut, but in the superior provincial courts, were more open, if oral pleadings were admitted, and witnesses examined always by the judges of the court, as in our courts of justice in England, then under the superintendence of well-selected judges in those courts, and with a gradation of appoint-

ment

ment established from the inferior to the superior judicial situations, I should think a sufficient number of civil servants might be educated to fill the benches of the zillah courts, the provincial courts, and the sudder adawlut. There are now some excellent judges in the adawlut courts in India, but their qualifications have been the result of their own diligence, coupled generally with a long period of service limited to the judicial department, and that generally in compliance with their own wishes and desires.

110. Have you heard it suggested, or would that be expedient, if one judge of the Supreme Court sat as a member of the Sudder Adawlut; what would you think of such a suggestion?—I think it would be very desirable to have one English lawyer on the bench of the Sudder Adawlut, as well to administer justice according to the general and broad principles of our judicial regulations (which being grounded on rules originally proposed by an English judge, Sir Elijah Impey, would present no difficulties in their administration to such a person), as also to regulate and improve the practice of the courts subordinate to the sudder adawlut. But whether the judge of the Sudder Adawlut should also be a judge of the Supreme Court, is a question of doubt. Indeed it appears to me that the existence of two concurrent jurisdictions, both called supreme, within the same limits, is an anomaly that is productive of very considerable inconvenience.

111. How far can those courts be considered as concurrent?—They are so far concurrent that cases have occurred in which opposite decisions have been come to by the Sudder Adawlut and the Supreme Court, on the same rights, supported by the same evidence.

112. In such case what has been the result; has it occasioned an appeal to this country?—A case to which I was particularly referring was one which occurred at Calcutta a good many years ago, and on some points of which an appeal is now unproceeded in, in England. A Hindoo claimed succession to some property, the greater portion of which was in the provinces. The suit came up by appeal before the Sudder Adawlut: the right claimed turned on the question of adoption: the Sudder Adawlut rejected the claim; the party obtained permission to appeal to the King in Council. Before the appeal was sent home he presented a petition, praying leave to withdraw the appeal, as he and his opponent had compromised. In consequence of this application the appeal was taken off the file of the Sudder Adawlut. A few months after he applied again for leave to revive his appeal, alleging that the deed of compromise had been extorted from him by the other party. The Sudder Adawlut referred to the zillah court through whom the deed of compromise had been transmitted, and learned from the judge of that court that the party had appeared before him, and had most satisfactorily stated the act to be voluntary on his part. Under these circumstances the Sudder Adawlut refused leave to revive the appeal. The party then indicted certain persons before the Supreme Court at Calcutta, for a conspiracy to extort from him the deed of compromise; they were convicted, and sentenced to fine, imprisonment, and pillory. An appeal was made to England on the question whether the pillory could be legally a part of the sentence. The whole of the proceedings on the criminal trial was brought in to the Sudder Adawlut by the petitioner, as a ground for the granting of a renewed petition that the appeal to England might be revived. Failing in his

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his application, he brought an action of ejectment in the Supreme Court, for the recovery of a small portion of the property of the same estate, which happened to be within the jurisdiction of the Supreme Court. The same evidence which was produced in the Company's courts was diligently and minutely examined by the judges of the King's court. The judgments pronounced by each of the three judges were taken down, and formed the grounds of another application to the Sudder Adawlut for leave to appeal to England. The judgment of Sir William Burroughs, one of the puisne judges, coincided with that of the Sudder Adawlut; but those of Sir Henry Russell and Sir John Royds being opposed to his, the majority of the court decided in favour of the claim to succession. The court of Sudder Adawlut, however, still adhering to their own view of the case, again refused to revive the appeal; and the point of appeal to England is, whether the Sudder Adawlut was justified in that refusal. The name of the plaintiff in that case was Rajah Moteelal Opadhia; and that of the defendant was Jagganath Gurg.

113. Have you considered the plan which has been proposed for the institution of legislative councils at the Indian presidencies; and if so, what is your opinion of it?—I have read the papers printed in the 5th Appendix to the Evidence that has been given before the House of Commons, but only hastily, and the subject is of too great magnitude to form a hasty judgment upon. It certainly appears to me that the combination of the knowledge and experience of English judges with those of the Indian governments, would afford the best hope of forming such laws as might be administered with advantage, especially in the event of Europeans being permitted to reside in India in any great numbers. The difficulties which have embarrassed both the courts and the Government abroad have arisen in a very great degree from the looseness and imperfections of the statutes regarding India drawn in England; and it would appear impossible but that it should be so. But in order to make the system perfectly effective, it would be most desirable that a greater degree of interest should be excited in England in matters relating to Indian government, and that a more regular and constant acquaintance should be kept up by Parliament and the public authorities with the course of our administration in those extensive and important dominions.

114. Do you consider it is an essential part of such a plan that the council should be composed partly of judges of the Supreme Court?—I think so, if the Supreme Court is still to continue under a separate authority from that from which the Government derive their power; if the law is to be administered to Europeans by a court which has but a limited jurisdiction over natives.

115. In what way can it be material to have those judges a part of the legislative council?—Because the differences which have occasionally arisen between the Company's government and the King's court are in a great degree traceable to the imperfection of the present state of legislation, to the want of clearness, precision, and fulness in the statutes relating to India. The admission of the King's judges to be parties in making new laws would, I have no doubt, prevent the recurrence of similar difficulties. I assume that the differences alluded to have arisen rather out of the difficulties which the judges of the Supreme Courts have met with in interpreting and acting under the law as it now exists, than from any wanton opposition to the government. If the laws were drawn by the two authorities

thorities together, the root of those causes of dissension would, I conceive, be removed.

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116. Could the natives be consulted upon that subject?—I should think that natives might be consulted with great advantage, and that they should be so; but I do not think that they are at present in a state of sufficiently advanced mental cultivation to render it advisable to give them a vote in such an assembly. One of the greatest difficulties that we have to contend with in our dealings with the natives arises from their aptness to make use of the influence which they are supposed to acquire from frequent and near intercourse with Europeans in high authority, to attain undue objects of personal advantage; and to this end they too often misstate the quantum of their influence and authority. Or if a native employed in a high duty be himself exempt from this fault, he would not be exempt from the suspicion of it, and improper means would in all probability be resorted to by others connected with him to avail themselves unduly of the influence which he might be supposed to have. It is the difficulty arising from these circumstances that has frequently led many Company's servants of the highest integrity to avoid intercourse with the natives, lest they should subject themselves, or the persons whom they consulted, to the evil consequences to which I have alluded.

117. Do you confine that to Madras?—I believe it is general.

118. In what mode do you think the advice of natives could be obtained, short of giving them an actual vote in the legislative council?—By the most free communication, both in conversation and in writing; and by associating them with us in whatever duties are performed in public, and open to general scrutiny and examination.

Veneris, 16° *die Martii*, 1832.

The Right Hon. ROBERT GRANT in the Chair.

HOLT MACKENZIE, Esq. called in and examined.

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119. WHAT is your opinion generally of the character and qualifications of the native judges, both Hindoos and Moslems?—I believe that those who in Bengal are called Sudder Aumeens (literally, head referees), being the highest class of native judges, and who get a salary varying from 150 to 240 rupees a month, are in general very respectable, and that they are accordingly well esteemed by the judicial officers under whom they act.

120. State in what courts they exercise jurisdiction, if you please?—They have cutcheries or courts of their own, but are established at the places where an European officer is stationed; and they have authority only to try cases that are referred to them by the European judge, either original suits, or appeals from decisions

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passed by the inferior native judges. These, most of whom are stationed in the interior of the districts, with jurisdictions ordinarily corresponding in extent with the police subdivisions, and with original cognizance of suits of a certain amount or value, in which the parties are natives, are called Moonsiffs. They receive no salaries, but are paid the amount of the stamp duty taken in lieu of the institution fees on the suits decided by them. In many places they are very wretchedly paid, and are, I believe, exceedingly bad judges.

121. These are all under the zillah courts?—Yes. The civil courts of a district are as follow: 1st, The Moonsiffs, whose number varies greatly, averaging about fourteen in the Lower, and nine in the Western Provinces: they have original jurisdiction to the extent of 15 *l.* in cases wherein both parties are natives; and from their decisions an appeal of right lies to the district court. 2dly, The Sudder Aumeens, for the trial of cases referred to them by the district judge; of these there are never less than two in a district, the situation belonging, *ex officio*, to the mooftee and pundit (the Moslem and Hindoo law officers or assessors) of the district court; and others are appointed according to the wants of the service; several districts having in all five: their jurisdiction extends to suits of 100 *l.* From their decision there is an appeal of right in all cases decided by them in the first instance. From decisions passed by them in cases of appeal from the moonsiffs, there is what is called a special appeal, which the judge may and ought to reject, if not satisfied that there are special grounds for revising the aumeen's judgment. 3dly, The Court of the Registrar, whose ordinary authority is confined to the trial, on reference by the district judge, of original suits not exceeding 50 *l.* in amount or value, with an appeal of right to the judge; some registrars being vested with special powers, to whom the judge may refer original cases exceeding 50 *l.*, and also appeals from the decisions of the native judges. Lastly, the District (zillah or city) Court, the judge of which has original cognizance of all cases not exceeding 1,000 *l.*, with an appeal of right to the provincial court in cases tried by him in the first instance; a special appeal lying from decisions passed by him, or appeals from the courts of moonsiffs, sudder aumeens or registrars. There is usually only one registrar in a district sitting at the same station with the judge; but in some large and populous districts additional registrars have been appointed, who hold their courts at places distinct from the head station of the district, being also joint magistrates. All the officers I have mentioned are paid salaries excepting the moonsiffs, whose remuneration consists in the amount of the stamp duty taken in lieu of the institution fee, in suits decided by them.

122. There are no fees in those courts, except stamp duties?—There are no fees allowed to any of the officers of the courts; and the government fees on the institution of suits and appeals, on the filing of exhibits, on the summoning of witnesses, on pleadings and petitions, and copies of papers (the first only is chargeable in the moonsiffs' court), are all levied in the form of stamp duties, as settled by Regulation I. of 1814. But the vakeels, or native pleaders, who are not properly officers of the court, though appointed by the judges, are remunerated by fees deposited by the parties in court, the amount of which is regulated by a government regulation, and varies according to the amount or value of the thing in suit.

123. Those fees are all regulated?—Yes, they are all regulated.

124. With

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124. With respect to these Sudder Aumeens, when you say they are respectable, did you speak of their judicial qualifications as well as of their private characters?—I believe there is no want of talent among them.

125. In point of knowledge of their own law, they are well versed and expert?—I imagine so, generally. The Mooftees or Moslem law officers are usually reckoned men of learning, and well versed in their law, as the pundits are in theirs. But the number of cases turning upon points of inheritance or other questions, in deciding which our courts are guided by the dogmas of the Hindoo or Moslem codes, are comparatively few; and in cases of ordinary contract, they commonly decide according to their notions of what is equitable, with such reference only to local law and usage as may be necessary to ascertain the meaning of the parties entering into the agreement.

126. Will you state whether you conceive that their ideas of equity, according to which they interpret contracts, are founded upon just principles; whether the principles of judicature are good in these cases?—I believe that their decisions are generally good, at least as good as most of those of the European judges above them; but I am not myself qualified to estimate a very high standard of judicial excellence; and I do not of course mean to compare these men with the more accomplished judges of this country; but as far as I can judge, I believe many of them to be very capable of sifting and judging of evidence, so as to reach the facts of the cases tried by them, and of applying correctly just principles. This opinion I hold particularly in regard to the Moslem law officers, whom I have known, and whom I regard not only as men of learning, but of acute and logical intellects, well adapted to the administration of judicial affairs. The Pundits or Hindoo law officers, of whom however I know less, though often learned men, are generally more recluse, and are said to be wanting in knowledge of the world; and independently of those who are considered to belong to the learned classes, numbers of natives, both Hindoo and Moslem, are to be found with much talent and great aptitude for business.

127. You state that the moonsiffs, who are all ill paid, are indifferent judges, and you seem to think the sudder aumeens better judges, who are respectably paid; how far do you conceive that the raising of the emoluments of the moonsiffs would be the means of their qualifications being improved?—I think that by raising the salary you could command any amount of talent you chose. Of the present moonsiffs, indeed, I believe many are men who could not be much improved by any change; but, doubtless, there are among them some men of talent; and if all native judges were put, in point of emolument, on the footing of the sudder aumeens, or had the prospect of becoming so, I conceive that you could immediately obtain for all the courts required, judges with qualifications equal to those which you now have in the sudder aumeens; and it also appears to me, that by holding out the prospect of certain promotion as the consequence of merit, and by facilitating education, you might soon get still higher qualifications.

128. Will you state more particularly any new way that you consider will facilitate the education of these persons?—Already a good deal has been done by government. In the colleges at Calcutta especially, the system of education has been much improved. Besides their own learning, many of the students are now

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attending to English: mathematics particularly are cultivated; and there is a gradually extending acquisition of general knowledge. By pursuing the system, by establishing more seminaries under proper superintendence, by supplying instructive books, and especially by promoting the acquisition of the English language and science, we may soon give to the educated classes more enlarged notions, notions that will certainly fit them better for communicating and co-operating with us. But of all the means that government can use for promoting the education of the people, and their progress in knowledge and morals, none I conceive will be so effectual as the distribution of public patronage, so as to hold out a fair prospect of promotion to liberal rank and emolument to those who show themselves superior men.

129. At this moment what are the means of education for these native judges, and especially the sudder aumeens?—For the Moslems there is the Mudrissa or College at Calcutta, in which law and all branches of Mahomedan learning have long been taught; and, more recently established, there are academies at Agra and at Delhi, where both Mussulmen and Hindoos receive a more popular education. The Hindoo law is taught in government colleges at Calcutta and Benares. The students who are admitted on the foundation of the government colleges are selected on a competition of candidates; and most of them, after passing through the prescribed course of study at those institutions, obtain certificates that they have acquired such a knowledge of law as to qualify them for the situation of law officers in any of the established courts; to which, if appointed, they become, as I have mentioned, *ex officio*, sudder aumeens. A similar testimonial is required from all candidates for the situation of law officer, wheresoever educated. The other sudder aumeens and the moonsiffs are appointed on a general report of their being qualified for the trust; and for both classes there exist, independently of government institutions, various means of education common to Hindoos and Mahomedans, more or less efficient. There are schools of which the masters live by the fees of their scholars, as in this country. Teachers entertained by individuals usually instruct the children of neighbours; and throughout the country, almost every man noted for learning is himself an instructor of youth. I do not remember hearing of any celebrated doctor or pundit who had not young men waiting upon them as pupils, and learning the law and other sciences at their feet. In this way a great many young men are educated in almost every district; but it is not easy to say the precise extent to which instruction is thus conveyed.

130. Do the pupils pay the teacher?—Not generally for instruction of a highly learned character. Those who teach merely Persian or Hindee either take fees from their scholars, or are paid by the heads of the families in which they are employed. But men at all celebrated for learning, and indeed most of the instructors in Arabic and Sanscrit, usually give tuition gratis; often, indeed, feeding and clothing their pupils; and at the government institutions there are a considerable number of students who get a small allowance for their support, it having always been the practice of native colleges, that the student should not pay but be supported. The habits of the people being very moderate, a few shillings suffice for the support of a student. The rank and reputation of a man of learning are promoted by his having many pupils; and both masters and scholars in many cases

cases get presents on occasions of solemnity; it being indeed no disgrace to a poor student to beg.

131. These pupils, then, are not of use to their teachers as they advance?—I never heard that they were of any use. The men of learning who gather pupils about them look more to the reputation of the thing than to anything else.

132. Perhaps in that way promoting their employment?—Chiefly in promoting their rank in society.

133. Now with respect to the allowance in the Government College, is that allowance made by government?—Yes. A part of the general fund is appropriated to the support of a certain number of students. It has been an object with us latterly to encourage the attendance of students who are willing to attend, without pay, for the sake of learning; but with reference to the usages of the people, the change could only be made gradually. I do not doubt that before long all such allowances may cease.

134. Then you think it probable that the value in which tuition will be held will give it a price?—Certainly, if the government hold out the prospect of promotion and tolerably well paid offices as the probable reward of merit.

135. Do the teachers who engage in this private tuition preserve the same system of law and practice, or is any inconvenience found by the private tuition being in separate hands?—I believe the tuition is generally far inferior to what the government institutions give, being less regularly pursued; but the course of legal study is, I believe, so prescribed as to prevent any essential diversity of system, excepting what arises out of difference of sect among the Moslems, and the prevalence, locally, of different rules among the Hindoos, which does not, I apprehend, practically operate to occasion any difficulty.

136. Do you conceive on the whole, by a more extended means of education, by acting on the principle of competition, and by giving better pay to the inferior judges, that great improvement could be made in those judges and in the efficiency of the law?—I should think a very great improvement indeed might be made in the efficiency of the law, and especially in the qualifications of the lower order of judges, by a sufficient increase of pay, so as to make their office respectable, instead of being, as now, miserably paid and little esteemed.

137. Describe more particularly the mode in which these persons are appointed to the situations of sudder aumeen or moonsiff.—At present they are generally appointed on the recommendation of the judge of the court, who reports their sufficiency.

138. Is it merely by the certificate of the European judge that they are appointed?—For law officers a prescribed certificate, granted after examination by a committee appointed for the purpose, is required, as evidence of their knowledge of law. Their other qualifications are taken on the report of the judge; and in respect to native judges, not law officers, their appointment depends wholly upon the recommendation of the officers who nominate them, in regard to character and qualification. Even the certificates granted on examination, like the title of doctor assumed or allowed by the common voice, can be taken to prove no more than that the man has studied certain books, and read much and long: how far he may have used that reading is another question; and there being no competition, the appointment

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ment of all may be said to rest entirely upon the recommendation of the nominating judges.

139. Could means be found to bring into a more accurate test the qualifications of these persons before they are employed?—I think the best test, and which might be gradually employed, would be found in requiring all the men who look to the office of native judge to commence as pleaders. Already the government colleges grant to students certificates which entitle them to act as pleaders; and gradually, I should think, we could, by requiring similar testimonials from all candidates for that situation, get the native bar filled by men of education, who should also be selected as executive officers of the courts. Then if from the best of them the native judges were selected, and if at the same time a gradation in rank and pay were established among the native judges of each district, a very effectual system of competition would result. My notion is, that for an average-sized district twelve native judges would suffice, and that with a gradation of from 100 rupees to 500 rupees a month, those twelve, all being men suitably qualified, might be obtained for about the sum that is now paid to one English district judge, that is to say, 30,000 rupees a year. And I conceive that the native judges should in the first instance be chosen from among the vakeels; and then that their promotion from the lower to the higher rank should be made to depend on the mode on which they discharged their duty, especial reference being had to their good character, to the number of suits decided by them, and the fewness of the appeals from them. No other test or means of competition so effectual occurs to me; but of course the first step must be to have well educated men for vakeels.

140. Are the native judges ever now selected from the vakeels?—I believe very few; but I cannot speak with certainty. I never heard of a law officer who had been previously a vakeel; and indeed the situation of pleader has not hitherto been considered a respectable one, except in the highest courts. In the inferior courts, even in that of the district judge, it is not reckoned a desirable profession. In the Sudder Dewanny Adawlut, or chief court at Calcutta, some of the vakeels with whom I was acquainted had large emoluments, and were men of great respectability and talent; and I believe that in the provincial courts the vakeels are frequently very respectable men; but below that they are not generally esteemed at all as they ought to be, considering the importance of a good bar to the administration of justice.

141. Those officers have a per-centage upon the value of the causes, have they not?—Yes.

142. That is settled by the regulation of the office?—Yes.

143. The amount of the fees is paid into court at the institution of the suit?—Yes, before the pleader does any act for his client.

144. You say that all those native judges would act for about the same salary that is given to one European judge; do you conceive that it would be possible, by taking proper means for the purpose, much more extensively to supersede the use of European by Native judges than is the present practice?—I think that several of the present judges might be dispensed with immediately, if, as I conceive to be reasonable, the native judges were vested with the primary jurisdiction of all cases, and if the labours of the European judges were directed to the object of causing

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causing justice to be done, not wasted in the attempt to do it directly. It appears to be necessary that there should be an appeal to the European judge; but the necessity of his investigating such cases might often be obviated by his referring them back for a new trial, either to the judge who originally decided them, or to two or more of the other native judges of the district. And the main business of the European officers being to see that there is not a failure of justice through the neglect or corruption of the natives, their interference in the individual cases should be limited to what is necessary for that purpose. Were this principle followed, I have no doubt there might be a great saving of expense with a more efficient administration of justice; and indeed, even if the present law were enforced to its full extent, and if the zillah judges took cognizance of such causes only as from their amount they must try, the judicial business of the country might, I believe, be done with fewer of them, or at least more business be done with increase of numbers. It is not, indeed, easy to say what would be the effect on litigation of an improved system. It might increase greatly for a time, if the present system operates to quash just claims, but would in all likelihood afterwards subside; and of course if, by any plan, the same number of judges are enabled to render to the public a greater sum of justice, while the demand for justice remains, it is the same thing as if the work now done were accomplished by fewer judges, in so far at least as concerns the relation of the establishment entertained to the duty to be executed.

145. Have you formed any calculation what would be the difference upon the whole in the event of introducing native judges to the extent to which it now appears practicable?—The best judgment I have been able to form is stated in a letter addressed to the Governor-General in Council, by the Finance Committee in Bengal, dated in July 1830, to which a schedule is annexed, showing that a very considerable expense might be saved. The great object, however, really is to prevent an increase of expense, everybody acknowledging that at present in Bengal the administration of civil justice is extremely bad, and quite inadequate to the just expectations of the people. The European courts are overloaded with arrears, the delay in them is excessive; and, to say nothing of other evils, the large arrear of appealed cases holds out a temptation to litigious appellants that seriously clogs the whole course of justice. This is the more felt from the circumstance that the highest interest adjudged, viz. 12 per cent., is much below what needy natives are frequently in the habit of paying; so that a postponement of payment is a great object, even when ultimate resistance is hopeless. And on the whole, it may, I believe, be certainly assumed, in so far as Bengal is concerned, that some change is absolutely necessary in order to get through the existing business without an increase of establishment. It may be proper to mention, that in the plan submitted by the Finance Committee, to which I have referred, the following arrangements also were contemplated: First, The separation of the charge of the police from the duty of trying and deciding criminal as well as civil cases. Secondly, The union of the charge of the police with the management of the land revenue. Thirdly, The abolition of the registrars' courts, and of the provincial courts of appeal, which are intermediate between the zillah judges and the Sudder Dewanny Adawlut. For fuller explanation of the scheme, I would beg leave to refer to the Committee's Report, and the Minutes by its members subsequently submitted.

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For the civil courts, the main principle was to give the primary jurisdiction to natives, to make the zillah and city judges judges of appeal, and to have only one superior court of appellate jurisdiction, for the maintenance of general principles and the trial of special cases.

146. The present court of appeal from the zillah court is the provincial judge?—Yes, and from the provincial court to the Sudder Dewanny Adawlut; the principle being to allow one appeal as of right, and one special appeal, upon due cause being shown, to the superior court.

147. Now, looking at the increased employment of the natives in judicial departments, have you ever considered how far a change would answer gradually in the case of a considerable increase in the number of Europeans settled in the interior?—I do not think that there ought to be any serious difficulty in giving to the natives at the head station the power of deciding causes in which Europeans are concerned, even supposing them to be more numerous than appears probable.

148. The question is, supposing the Europeans are made subject to it?—I mean so; and I conceive that the apprehension of difficulty rests on prejudices that would soon pass away, if the native judges were placed on a proper footing, and the English district judge confined to his proper functions. For a time, probably, it might be necessary for the native judges, in issuing out process, to apply to the English judge to back their warrants, and otherwise to seek his support. But that cannot be deemed a very serious difficulty; and the necessity would, I doubt not, gradually cease, or become of very rare occurrence. Under a properly organized system, European settlers would generally, I conceive, soon become reconciled to being subject to local tribunals; and unless the English judge were inefficient, even those who entertain most strongly the notions that arise out of an exclusive system, would see the necessity of submitting, and would submit, and I believe that respectable and well paid natives would decide fairly.

149. Would it not render a greater number of tribunals necessary?—Only I should think if the Europeans were in such numbers as to change the current of business. If they add much to the commerce of the country, the necessity of such tribunals would probably arise out of their settlement, not otherwise.

150. Did I understand you rightly, that you think the necessity of having provincial courts would be done away with?—Yes, I think they might be done away with altogether. I consider them to be bad courts at present; they are in general filled by men in no respect superior, perhaps inferior, to the district judges over whom they are placed, and their decisions are of no value as guides to those judges.

151. You would then contemplate the existence of an European judge in each district?—Yes, but not precisely the same number as at present. The immediate reduction we contemplated is not however so great as may, I conceive, be ultimately effected; for, in proportion as the natives improve and acquire rank and self-confidence, the number of English judges may be gradually reduced. If I remember rightly, the Committee proposed 41 instead of 52.

152. Are there not European officers assistants or secretaries to the district judges?—A registrar forms part of the establishment of every court. Those officers, who are covenanted civil servants of the Company, were originally ranked among the executive officers of the courts, being also employed to registrar deeds; but practically

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practically their main duty is that of assistant judges, to decide cases referred to them by the judges, either civil suits or complaints of minor criminal offences; and the proposal to abolish the office was founded on the persuasion that the employment of such young men as judges in lieu of the natives, is a bad plan, expensive and inefficient.

153. As to the appointment of the vakeels, they are appointed by government, I believe?—The vakeels of the sudder and provincial courts are appointed by the judges of those courts. Those of the district and subordinate courts used to be appointed on the nomination of the district judges; and though it was prescribed that a preference should be given to persons educated at the government colleges, the selection practically rested on the discretion of the judges. But in 1826 (by Regulation II. of that year), a rule was passed, that native students, in any of the public institutions, who shall receive a certificate of proficiency in the laws and regulations, and of good character, shall, in virtue of it, be admitted to practise in any of the zillah or city courts they may apply to, unless there be special reasons to the contrary, as stated in the regulation I have mentioned. I am not sure, however, how far it has been practically acted upon. I should also state, that among the vakeels there is one called the government pleader, who is employed in all suits in which the government is a party, and whose appointment to that office rests with the government.

154. I would ask whether the moonsiffs are ever appointed from the vakeels?—I believe very seldom.

155. Are the vakeels of a lower class of society than the moonsiffs?—Not generally; but the rank of both is of various degrees.

156. Do the judges of the provincial courts go the circuits for the trial of criminal cases?—Not at present. The circuit duties are now vested in certain officers, called Commissioners of Revenue and Circuit.

157. In the new system, should you propose to continue that, or make the zillah judge go the circuit?—I should make the zillah judge do the duty.

158. And remove altogether that jurisdiction?—Yes, and have a separate superintendence of the revenue.

159. How far does the public voice among the natives appear to call for the increased appointment of natives in official situations?—I believe the public voice is upon the whole favourable to European judges; and that, taking the native community generally throughout the country, they would prefer not increasing the power of the native judges to the exclusion of the European courts. This conclusion I come to, from the distrust with which they generally regard their own countrymen. It must however be acknowledged to be exceedingly difficult to ascertain the native opinion upon any point of that nature. Indeed, upon all points they are too ready, when communicating with those in authority, to say what they think will be received with pleasure. But my impression as to the view they take of the measure of vesting their countrymen with enlarged authority, was confirmed by what I heard after it was known that I was strongly in favour of it. I should observe that I do not think they ever look to the financial part of the question. If they had to decide whether they would directly pay for the one or the other, it would be different; but I do not conceive that even the well-informed regard the

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financial arrangements of government as a matter of any interest to themselves, unless when some precise demand comes upon them. At least, I never knew a native who seemed to regard the expenditure of the public money as an evil, though impatient enough of any demands arising out of such expenditure that disturb their own interests; and therefore I conceive, that in preferring European judges, the consideration of the saving to be effected by the opposite course would never cross their minds; they would think simply having one man they could trust more than another.

160. Do you think they have no feelings of anger, from the exclusion of the natives?—I do not think the general body have, though individuals may entertain the sentiment; and I have no doubt that those who are candidates for office look with very great anxiety to any extension of their means of lucrative employment. Indeed, I know they do, having communicated with many such, who all appeared to be exceedingly anxious for the change; and of course those in new countries, who or whose families have actually lost power, and who retain the recollection of the loss, must be discontented in consequence. But it is to the great body of the people I refer, when speaking of the public voice; and I think that, as far as the Bengal Presidency is in question, the public voice is in favour of employing Europeans, and condemns them when they rely much upon natives.

161. Can you suppose an altered system would secure a better adjudication; is there any reason why a favourable effect should not be produced upon the native opinion by that?—I have no doubt the native opinion would change, when they saw their countrymen, with rank and emolument, administering justice well; they would certainly recognise the advantage of it; but at present they consider them as what they have been under different circumstances; and, generally speaking, the feeling of patriotism is almost unknown to a native, he seldom looks beyond his own village.

162. Is there no national feeling?—I believe there is in some cases. Where particular tribes prevail, they have a feeling for their tribe that may be called national. Thus, for instance, I have no doubt that among the Rohillas there exists a strong national feeling. Probably, too, a national feeling more or less strong pervades the Mahrattas; but I am not at all acquainted with them. I do not think the people of Bengal Proper have any national feeling. The Moslems, indeed, generally have a religious feeling that must operate against our rule more or less strongly; but this, which is not I think very strong among the Bengalese, cannot properly be called national; and the religious feelings of the Hindoos do not seem to me much to affect the question, where caste has not given power or wealth. With respect to the feelings of natives on the subject of public employment, I should add perhaps, that I believe many of the higher natives of Calcutta do complain of the exclusion of their countrymen from lucrative situations, and would be gratified by their admission; but they seem to speak rather from the feelings that have been instilled into them by communication with us, than from those which belong to the great body of their countrymen; at the same time, it appears to be impossible to doubt that such feelings must gain currency and strength with the progress of education, and with the consciousness of rights, which the possession of a good government will give.

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163. There has been a vast change?—Certainly; the change that has occurred in Calcutta is very great, and although doubtful whether substitution of natives for Europeans would be popular at the present moment, I have no doubt that to a great extent it is right.

164. How far is the principle of promotion according to merit among the native judges now acted upon?—I believe little, if at all; at least I am not aware of any native judge being promoted, excepting a few instances, in which the law officers of the Sudder Dewanny Adawlut may have been selected from those of the inferior courts.

165. Is there any reason for excluding from judicial offices of any eminence the mixed race between the Europeans and the natives?—I think they ought to be considered as natives of the country.

166. They are now excluded from all these situations?—They may be sudder aumeens, and I think they ought not to be excluded from any situation to which natives may be admitted; but I do not think they should be treated as Europeans, or rather I should say, the principle ought to be, to have no more English gentlemen deputed from England than are absolutely necessary to maintain the dominion of England, and that all situations not reserved upon that principle should be open to all classes equally. I think that, for the present at least, the English judges must be men deputed from this country.

167. Both in the lower and in the higher courts?—In the zillah and city courts, and in the sudder courts; and all other courts should be equally open to all classes, whether Europeans or Natives, Christians, Hindoos or Moslems.

168. Do you mean to say by your former answer, that the reputation of the European judge is very considerable among the natives?—In point of honesty it is, I believe, exceedingly good.

169. Is not their confidence in the court greatly shaken in consequence of the junction of the police?—I think that operates only in so far as it occasions delay; it does not seem to be regarded as a cause of bad judgment; it sometimes occasions hasty decisions, and thus aggravates the inequality of judges; and of course the judges are very unequal; and among so many there are some with qualifications quite below what ought to be required for the office. Their decisions are, many of them, exceedingly bad; but there is hardly any instance in which personal corruption in the judge is suspected as the cause of misdecision.

170. Have you ever framed any plan for a general judicial system over India, in which the functions now exercised by the supreme courts should be blended with those exercised by the country courts?—No, I have never formed any plan of that kind.

171. What is your idea of it?—I do not imagine that I could add anything to what is stated in the discussion between the Bengal government and the Supreme Court of Calcutta, of which the papers have been printed.

172. In what Appendix?—In the Appendix, No. V. dated 11th Oct. 1831; and I can only add, that there do not occur to me any serious obstacles in the way of having one Supreme Court, consisting partly of gentlemen who may have practised in courts at home, and partly of those who have risen in the judicial service of the country, to take the place of the present King's Court, and of the Sudder Dewanny and Nizamut Adawlut.

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173. How far would it be possible to have an English bar in India from which you could select judges for the country courts?—I do not immediately see how it could be arranged; for the question involves a great variety of considerations. But it would, I think, be very advantageous if it could be so managed (and with one Supreme Court constituted as suggested, with a careful adaptation to local circumstances, it might probably be found practicable), that a portion at least of those who are destined to be judges should practise as barristers.

174. Do you conceive it to be necessary that more care should be taken than is taken under the present system, for qualifying the Europeans who are employed in the country courts as judges?—I think certainly it should be so; it is quite monstrous that the appointments should be made with no better securities for due qualification; it is wonderful that they have done so well as they have.

175. Would you have any system of education or examination for them?—I think that no man appointed to be employed in the civil administration of India should leave this country until he is about two-and-twenty years of age; that all should be required to have an education suited to the high functions for which alone it seems reasonable to depute officers from this country; that consequently, among other things, they should have a liberal law education, by which I mean, that they should be acquainted with the general principles of law and the systems that have prevailed in different countries, in such a manner as a well-educated English gentleman destined for public life would, I presume, be. Their possession of the required qualifications would of course be ascertained by an examination. To this, I would add the making of the appointment, if possible, by some system of competition, so as to be sure of the selection of the best out of many good men. Whether such a plan could be practically brought to bear, I cannot venture positively to say. It was, I believe, partially followed by Mr. Wynn; and if his plan had been carried further, I see no reason to doubt its success. England appears to be full of talent highly cultivated, and struggling with the difficulty of getting employment. I should think, therefore, that for high office in India, you might require, and could easily obtain, almost any amount of qualification.

176. What was Mr. Wynn's plan?—It was, I believe, merely giving a certain number of appointments to the public schools and universities, in order that they might appoint those who were most eminent.

177. Would you apply that principle to exacting legal qualification, or do you speak merely of general education?—Among other qualifications, I should require legal knowledge, not technical skill, but a liberal acquaintance with law.

178. Have you known that the degree of elementary instruction that is acquired at Haileybury in the principles of the law has been of any use or otherwise in India?—As far as I have seen, no perceptible result has followed from the legal instruction there given; and though I dare say it has been of use, it must, I imagine, have been very slight.

179. Do you conceive, that if you had an unlimited number of candidates in this country out of which the requisite number of appointments should be made, or do you mean, having a good number of appointments, means should be taken to qualify or to have persons appointed as well qualified as possible?—I think the more you have to select out of the better. The best of all would be a general competition

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competition of the whole body of educated Englishmen who might desire the appointment. Next to that is a selection out of a body which, though limited, considerably exceeds the number to be selected. It was, I believe, proposed by the professors at Haileybury, that the Court of Directors should send to that institution twice as many as were to be appointed as civil servants to India, and that the best half should be selected for the appointments. That would have been a great improvement; but I think it would be better to follow Mr. Wynn's plan, and select from among the competitors of a still larger body.

180. By Mr. Wynn's plan, do you mean the plan proposed by Lord Grenville, of selecting the writers from the public schools and universities?—Yes. I have called it Mr. Wynn's, because he acted upon it in regard to some of the appointments that were at his disposal when he was President of the Board of Control.

181. In so far as the judicial appointments go, do you not conceive that more practical knowledge would be required than is to be obtained by individuals appointed from the University; there it would be theory, the other would be practice?—You must, I think, be content with giving theoretical knowledge in this country. And it is not merely judges that are to be provided; nor can Indian judges be generally fit for their business without local experience, and that an experience in affairs not strictly judicial. My notion is, that the civil servants should still, in the first instance, be employed as assistants to the magistrates and collectors or political agents; that in that capacity they might acquire a familiar command of the language, and a knowledge of the notions, habits and institutions of the natives, and become practically acquainted with the system and principles on which the business of the country is conducted. Those who were not disposed to pursue the judicial line might be otherwise employed. But it is chiefly for judicial duties, or administrative functions partaking largely of the judicial character, that provision must be made; and if, without sacrificing the more important objects of general experience and knowledge of the people, it were practicable to establish the plan of a local bar, at which persons destined to be judges should practise during a part at least of their preparatory course, it would, I think, be a great improvement. I am not sure whether any such thing could be managed, but it is very desirable that it should be kept in view.

182. In contemplating the new arrangement of the courts in Asia, did you contemplate the junction of the Sudder Courts with the Supreme Courts?—That was one of the measures contemplated by the Bengal government; but it does not seem to be a necessary part of the proposed arrangement of courts for the provinces. The constitution of the inferior courts might be changed as suggested, without any change of that kind in the Sudder. But the junction of the Sudder and Supreme Court would, I conceive, be an improvement.

183. Supposing the junction were to take place, and that was made the agreement merely in appealing, do you not conceive that there would be so much business attracted to that court that you might select a great number of inferior judges from the bar of that court?—I think it might probably be done; but I should observe, that the plan appears to imply that all the courts shall have a code for themselves, that they shall not be bound by English law further than may be distinctly provided on a full view of local circumstances, and that its mere technicalities, especially

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especially those which attach to landed property, shall be got rid of. It seems unreasonable to extend the law of real property to that country; and although I cannot of course pretend to give an opinion of any value on such a subject, I must acknowledge that I cannot see why there should be any serious difficulty in giving to India a code of laws to be administered equally by Native and English judges.

184. In such a case, would you allow a free resort of Englishmen and Natives to practise in such a court; at present they are appointed by government?—I should be for permitting perfect freedom in the access to the bar.

185. With respect to the plan of selecting writers from the public schools and universities, who should afterwards fill judicial situations in India, do you not conceive it to form some objection, that in no public school are the principles of law taught, and at neither of the universities does the law form any part of the ordinary academical system of instruction?—I do not think that a serious objection; I have no doubt that knowledge of law would be had, if a prize were held out for it.

186. Do you mean to say, that if a certain legal qualification were required, and the candidate were to be left to find that qualification where he could, so that he answered the test, that every purpose would be fulfilled?—Yes, I have no doubt that candidates would be found with the required qualification. The knowledge of law, not the result of practice, is, I imagine, chiefly acquired by the means of private study.

187. Do you know whether the profits that an English barrister could make in the courts would be sufficient to create a bar there; how would that be?—The profits to a certain number of the barristers of the Supreme Court are very large; and those also of some of the native pleaders in the Sudder Courts are liberal; but I cannot answer the question with precision, and the circumstances would be different.

188. How would a mixed bar practically unite?—The two bars, as now constituted, could not at all amalgamate, and I conceive it would be absolutely necessary, if the courts were united, that all their proceedings should be in English; for I do not see how you could have a united court so long as any of the proceedings, any part at least of the oral pleadings, were in Persian. And for a long time natives could probably be virtually excluded from the bar of the united court. Ultimately, however, I do not doubt that they would, if allowed, take their part, and the plan, if at all adopted, should be extended gradually.

189. Are the civil suits in the native courts expensive to the suitors?—I believe generally so.

190. From what cause?—The fees are heavy in proportion to the amount, as appears from a statement which was furnished to me from the Sudder when I had occasion to inquire into the point in Calcutta; and there are, besides, expenses of which we have no record. The statement is in Persian; but if the Committee wish it, I shall hereafter have the honour of giving in a translation of it. In the meantime, I may mention the first case. It is a suit for 155 begahs of land valued at 930 rupees. It passed through three courts, and the stated costs were about 670 rupees.

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191. Will you state what the courts are?—The first is the Zillah Court, in which the costs of the plaintiff are stated at rupees 194 $\frac{5}{16}$, and those of the defendant at rupees 90 $\frac{6}{16}$. The second is the Provincial Court of Appeal, in which the costs of the appellant and respondent are respectively rupees 102 $\frac{8}{16}$ and 52 $\frac{8}{16}$. The last is the Sudder Dewanny Adawlut, in which the costs are stated at rupees 128 $\frac{8}{16}$ for the appellant, and rupees 102 $\frac{8}{16}$ for the respondent.

192. In the paper alluded to, is there any cause in which there is more than two appeals?—No, there are only two appeals.

193. As the courts are now constituted in Asia, could there be in any one case more than two appeals?—I apprehend not, at least in Bengal, where only suits exceeding 5,000 *l.* are appealable to the King in Council.

194. What is the ultimate course of the appeal in those causes which are instituted in the courts below the zillah courts?—The provincial courts, if the first appeal has been decided by the zillah judge.

195. Supposing a cause to be instituted in the moonsiff's court, is the appeal from that court immediately to the zillah court?—The appeal is to the zillah judge; but he has the power of referring it to the Sudder Aumeen, and then from the decision of that officer there will be only a special appeal to him. If he tries it himself in the first instance, then there will be a special appeal to the court above him.

196. Are there appeals frequently in causes that are instituted in the lower courts?—As far as I remember the result of inquiries regarding some of the districts in the vicinity of Calcutta, the appeals from the Moonsiffs were about one in twenty, and those from the Sudder Aumeens about one in seven.

197. Can you state what proportion to the zillah courts?—I do not immediately remember.

198. Have you any documents which would give you that with regard to the zillah or provincial courts?—No; but I think the information will be found in the records of the judicial department.

199. Is there not a good deal of corruption practised by the natives in the courts, the native officers, by whom the summonses, for instance, are issued, and by whom the causes are appointed to come on in rotation?—It is supposed generally that there is considerable corruption; but I should think it must chiefly prevail in regard to the execution of decrees and other process. Many decrees are passed which are never executed, either from the party disappearing or making away with their property; and in the executive part of the court's business a considerable opening is given for corruption.

200. Do you not conceive the native officers of the courts are very accessible to bribery?—I believe so, unless they are well controlled by their superiors.

201. Are not these native officers appointed by the individual judge?—Yes, vacancies are filled up by or on the nomination of the judges.

202. Is it customary for him to take persons from a distance and place them in those situations?—I do not think that such is the general custom; though much depends on the will of the individual. Many judges are averse to strangers, and I believe, make it a point as far as possible to select for vacancies men of the province

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vince in which they are. Others pursue an opposite course, and I am afraid, sometimes unduly favour men that follow them.

203. Should you recommend the use of juries in the country courts?—I think it very desirable, if possible, to get the natives to assist in the administration of justice on the principle of jurors; but in the first instance, at least, it should be done in the way which is prescribed by the Bombay Regulation IV. of 1827, which leaves it optional with the judge to employ the natives as jurors, assessors or referees, without at once going the length of giving them a definitive voice.

204. Have you witnessed the experiment of the punchayet?—No, I have never witnessed it.

205. What is your opinion as to the success of the experiments that have been tried?—I believe it has very much failed, when it has been adopted as a substitute for regular courts of justice.

206. From what cause has it failed?—Chiefly, I think, from this, that the members have been neither supported nor directed nor controlled, but have been left to all their native irregularity, and not properly made a part of our judicial system; still, however, I believe that it has been very extensively used to settle matters that have never come within the cognizance of any of our courts.

207. How far is the punchayet analogous to the English jury?—It can scarcely in its native shape be said to bear any distinct analogy to a jury, being, in fact, merely a body of men to whom a cause is generally referred. They are not bound to decide; there is no issue given to them to try; they are under no direction, and are left to scramble out of their case as they best can.

208. They perform the functions both of judge and jury?—They are rather arbitrators, being, in cases of dispute between individuals, usually, I believe, nominated by the parties; and they very often, I have understood, act quite as partisans of the party that has selected them.

209. Are they sworn in any way?—No.

210. What is the general number?—I believe it varies, although the name indicates five as the general number. In cases relating to questions of caste, with which the European officers have comparatively little to do, they are frequently very numerous.

211. The decision of the punchayet of the village has not the validity of a judicial decision?—If the parties in a suit consent to a reference to a punchayet or arbitrators, their decision has the validity of a decree of court, and will be executed accordingly, unless there be corruption or gross partiality, on proof of which the award may be set aside.

212. Have the revenue officers ever used the punchayet?—Yes; I believe the native collectors use it extensively to adjust various disputes between the village communities and the different members of such communities. The collectors, too, frequently have recourse to it in the determination of questions of private right when making settlements. And one officer in particular, with whom I have had much communication, and who is singularly well acquainted with the natives of the country where he has been (Mr. W. Fraser), systematically employed it to a great extent in settling the boundary disputes between villages, preparatory to the survey of the Delhi territory and the districts immediately adjoining; and he stated that

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he had found the plan very successful, having, if I recollect rightly, obtained the decision of about 300 cases in that way, a little while before I was with him. His scheme was partly on the principle of a jury, and partly on that of the punchayet; that is to say, the members were generally chosen on the nomination of the parties; but they were required to decide without delay; the matter in dispute was brought to a distinct issue, and the whole proceedings were regularly recorded by a government clerk who was deputed for the purpose, with instructions to follow a prescribed course. The disputes were generally between (what I may call republican) communities of yeomen cultivating their own fields, for the possession of land generally of little value, but very eagerly contested by the people. The head men of the contending villages, acting for and in presence of the whole body, were required to nominate six on each side, making in the whole twelve. The right of challenge was freely allowed; and the jury (so to term it) was required to be unanimous. Mr. Fraser's reason for having so many as twelve was, as he said, chiefly that they might, by their number and weight, be placed above the reach of intimidation or danger from the vengeance of those against whom they might decide; and it was with the same view, also, with that of putting down party spirit, that he required unanimity.

213. They did not consist of the immediate parties?—No, they generally consisted of the more respectable people of the villages in the same pergunnah or local subdivision.

214. Were they boundaries between the properties of individuals or boundaries between the communities?—Boundaries between the communities, and generally of little comparative value, though very eagerly fought for.

215. Did they generally give satisfaction?—So he stated.

216. Do the natives now sit upon juries in the presidencies?—At Calcutta they occasionally sit as jurymen in the Supreme Court.

217. In civil cases or others?—Juries are only used in criminal cases, including, by a late decision, informations for the recovery of penalties.

218. They sit upon the grand jury?—No, they have not yet been admitted to the grand jury, which is, I think, a great mistake.

219. What has been the result of that experiment?—I should think it has hardly been tried upon a sufficient scale to enable one to pronounce any conclusive opinion; at least I have none.

220. Now with respect to the distance that the suitors often have to travel, is not that distance so great sometimes as almost to amount to a denial of justice in cases of small amount?—I do not think that would operate severely if there was no delay; although for the smaller cases you must continue to have a certain number of courts in the interior of the districts. Were it not for the delay, which is great and uncertain, I do not think that suitors in the cases tried at the head station would be much inconvenienced by the distance.

221. It is not the suitor alone, but his witnesses also?—Certainly; they must also and chiefly be considered.

222. To what cause is this delay chiefly to be attributed?—Chiefly to the arrear of cases in the courts.

223. Have not parties often been kept waiting for days together before their cause has been called on?—I should imagine it has frequently happened.

224. Would

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224. Would not the freer admission of the natives to public situations of trust and importance be likely to produce a favourable effect on the native character?—I think essentially so. I have no conception but that it depends mainly upon the government whether the natives of India shall be quite as good as those of any other country, though one cannot entirely exclude the effects of religion. For honesty in public trusts, you must rely chiefly upon those who are trusted liberally and well treated. I am not aware that the experiment has, in India, ever failed when it has been fairly tried; and I should assuredly expect that the public confidence and satisfaction in the native judges will depend upon their having proper rank and emolument and consideration from the government.

225. The utmost amount of the salary of the judge of an inferior court is 140 rupees a month, you say?—No; some get 240 rupees a month, the 40 rupees being for establishment and miscellaneous expenses which the native judge is left to bear; the 200 are to be considered clear salary.

226. Is he not obliged to keep a palanquin?—He generally does so, I imagine; but it is not absolutely necessary.

227. The expense of that is stated at 30 rupees a month, as one of the deductions?—A native would probably keep a palanquin for much less; they generally pay their servants less than we do.

228. Two hundred rupees a month would be 10 *l.*?—No, about 20 *l.*; and I think an average of 300 *l.* a year would be sufficient.

229. The forms of these courts are exceedingly simple, are they not?—Yes; the forms, indeed, of the country courts generally are as simple as they can well be. I am not aware of any form that could be advantageously dispensed with; and in the pleadings of the parties no particular technicality is required.

230. Supposing the question to lie between a Hindoo and a Mahomedan, in that case what law is followed?—The general rule is, that the law of the defendant is to be followed; but that provision I apprehend will seldom apply, because in cases of contract the judges are not bound either by the Hindoo or the Mahomedan law, and of course persons of different faiths will seldom be parties in cases of inheritance or other questions requiring a reference to those codes; indeed, a Hindoo becoming a Moslem or Christian, there arises a nice question which I am not able satisfactorily to answer; viz. how far the forfeiture prescribed by the Hindoo law would be enforced against the convert; I should think it would not be enforced against him if defendant. On the other hand, if he were plaintiff suing against Hindoos for his inheritance, I am afraid the Hindoo law must be enforced against him; and so with Moslems embracing Christianity.

231. Europeans residing in the interior are subject to the Company's courts to a certain extent, are they not?—In the civil department, I am not aware of any limit as to the amount, excepting that if the cause be such as would, in the case of a native, be appealable to the Sudder Court, it may be carried by appeal to the King's Supreme Court. In other respects, British subjects are subject to the country courts to any extent, provided they fall within the Act of Parliament that makes them so.

232. In criminal cases how is it?—In criminal cases they are only subject to the extent of a fine of 50 *l.*, in cases of assault or force, not being felony. In all cases of felony, they must be brought to the Supreme Court.

Lunæ, 26° die Martii, 1832.

The Right Hon. ROBERT GRANT in the Chair.

DAVID HILL, Esq. called in and examined.

233. WHAT is your acquaintance with India?—I went to India in the year 1806; I was employed there more than two years as an assistant collector; I was then in the secretary's office at Madras for 19 years.

234. Was that assistant collectorship in the country?—In the districts. For the last 16 months I was employed at Calcutta, as a member of the finance committee.

235. Your attention is requested to the following passage in your letter of the 30th of last January, which has been laid before this Committee, where, speaking of the want of any species of entail, under our regulations in India, for maintaining the ancient usage of the country, under which its old hereditary estates descended in the line of primogeniture, and were preserved in their entirety, you state that Sir Thomas Munro emphatically recorded his conviction that the evil just noticed was bringing the country to ruin; in what documents are the opinions of Sir Thomas Munro on that subject to be found?—In a minute recorded soon after he assumed the charge of the Madras government; I think in the year 1820.

236. Can you state more particularly what is that ancient usage of the country to which you have alluded in your letter?—Under the usage of the country the ancient zemindaries descended entire to the eldest son of the last zemindar, unless he was incapacitated on any ground, in which case a different member of the family was selected; but the zemindary was not liable to be divided nor to be alienated.

237. Not for his debts?—Not for his debts.

238. What is there in the present practice that has so ruinous a tendency as Sir Thomas Munro supposes?—Under the regulations the zemindaries are now answerable for debts, and are at the disposal of the present holder.

239. By the former usage the zemindar could not dispose of it by will from his eldest son, could he?—He selected a member of his family, and sometimes passed over his eldest son.

240. Without incapacity?—He was the judge, by the ancient usage.

241. By the ancient usage he could select?—He did select.

242. The person whom he thought the fittest?—Yes, the person whom he thought the fittest out of his own family.

243. Among his sons or his relations?—He did not select past his own sons; he would adopt a son if he had none.

244. Do you conceive that the provision which makes these lands saleable for debts could be rescinded or modified?—I have no doubt that it would be very advisable it should, provision being made for the payment of the existing debts; in fact, I framed a regulation for the purpose, under Sir Thomas Munro's direction.

245. Does that regulation exist anywhere now?—No, it was not adopted.

 246. What

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246. What measure would you recommend, by way of preventing the evils of the partition of property among the Hindoos?—I am not prepared to suggest any definite measure; but I entertain no sort of doubt that it would be easy to frame legislative measures that would correct the effect of this continual subdivision of property. Various measures will suggest themselves; the rule of primogeniture in this country, or the French rule of succession.

247. How far could any such change be introduced, without giving an inexpedient shock to the feelings and prejudices of the natives?—I am not aware that it would shock the feelings of the natives; I think it might be framed so as to be made extremely agreeable to them.

248. The principle of the Hindoo law is, that the property shall descend equally among the children, but an exception obtained by usage in the large possessions of the zemindars?—The ancient possessions of the zemindars who existed before we took possession of the country.

249. Was that confined to the large possessions, or did it descend to small properties?—I believe it was entirely confined to the ancient zemindaries, where the chiefship passed by the name of Samistanum.

250. Was it a species of dominion?—In many instances it was, depending on the extent of that possession.

251. And in many cases they had the power of government, had they not?—They had the power of government, and of capital punishment.

252. Those are the possessions you are particularly referring to, as being at the disposal of the proprietor by the selection of one of his sons, but not divisible among his sons?—Those are the possessions; not exclusively large dominions, but possessions held in that way, are what I allude to.

253. Then this usage of the succession going to one of the family, and not being divided, was not confined to these large territories and dominions of the zemindars you have mentioned?—It was confined to the ancient estates which we found subsisting when we took possession of the country.

254. Is that rule of descent that you have mentioned of the ancient zemindaries continued, or has it been changed?—Under the operation of the regulations, the estates are liable for all the debts of the holder, and are at his free disposal.

255. Liable to be sold for the government revenue?—Yes; but the government are extremely reluctant to put that power in force with respect to the ancient zemindaries.

256. Were the ancient zemindaries, before we had power of that country, liable to sale for government revenue?—I imagine that the lord paramount of the land exercised whatever authority he saw fit; he certainly did not expose the zemindaries to sale in the method we should pursue, but he realized the tribute he considered due.

257. These observations you have mentioned have been confined to the presidency of Madras?—Entirely.

258. Is there now any exception from the Hindoo rule of descent, among all the sons, within the territories of Madras among Hindoos, that you are aware of?—None, with such exceptions as the Rajah of Tanjore; but they are sovereign princes in some point of view.

259. Within

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259. Within those possessions that are directly subject to the government of the East India Company in the Madras presidency, is there any landed property which is not subject to division among all the children, according to the Hindoo law?—None, as far as I know.

260. In the case of the possessions of the Mahomedans, does the Mahomedan law obtain also in respect of estates in all cases among the children?—The Mahomedan or Hindoo law prevails, according to the religion of the party.

261. There is no exception of the estates of the Hindoos from the ordinary rule of descent, either among Hindoos or Mahomedans?—I wish to explain that, although under the regulations there is no exception, yet I am not disposed to believe that in practice the succession is generally varied.

262. You do not think that in practice it has been uniform?—I do not think effect has been given to the levelling operation of our regulations by the zemindars; our regulations make no distinction between the raj and the private estate.

263. The regulations do not make a distinction between the ancient zemindaries and modern possessions?—No.

264. What do you conceive to be the evil of that subdivision of property?—I should answer, in one word, its levelling operation.

265. Do you think that the land is worse cultivated in consequence of that subdivision of property?—I do not believe it is.

266. Do you not think that it may be better cultivated by reason of that minute subdivision?—I think it likely that it is.

267. Then your objection is, that it goes to the destruction of the aristocracy of the country?—The destruction of the aristocracy, and of the unequal distribution of wealth throughout the community; there can be no such thing as private wealth.

268. Then do you consider that great advantages would be derived in that country from the unequal distribution of wealth?—Certainly, from the existence of different ranks in society.

269. A great many of the ancient zemindaries have been sold, have they not, for government revenue?—Some of them have been sold; but government have been extremely reluctant to resort to that measure, and of late years have not done so in any instance whatever.

270. Then what was the course, if the government revenue was in arrear from the zemindaries, when they have not proceeded to a sale?—The collector undertook the administration of the affairs of the zemindary, and put the zemindar on an allowance, and the surplus was carried to the credit of government.

271. Has that mode succeeded?—It has been attended with a certain degree of success, in some cases with complete success.

272. Do you consider that that mode of administering the estates by a collector was preferable for the interest of government to that of seizing the zemindary, and bringing it to sale?—As far as the recovery of the arrears of revenue is concerned, the effect is the same if the process prove successful: as far as the ancient families are concerned, and also the preservation of the peace of the country, the government felt a very strong interest in saving the estates from sale.

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273. Do you consider it to be for the interest of the government in India that the large proprietors should not be destroyed?—I think it is for their interest, and much for their credit too.

274. Within the presidency of Madras, that rank of the proprietors has been carefully preserved as much as the government could preserve it, has it?—Of late years certainly so; I do not recollect any instance in which of late years the government have sold an old zemindary, but there have been such instances formerly, I believe.

275. You are speaking of the Madras government?—Only of that.

276. If there is this abstinence on the part of government to sell these ancient estates for their own demands, what has led to the partition of those estates?—The private debts contracted through the prodigality of the zemindar.

277. Would you then think it right that there should be any law which should prevent the sale of the landed property of any person, to meet the just demands of his creditors?—If it would prevent their prodigality, it would be a great benefit; and it would have that effect, if the creditors could not obtain payment of their debt out of the land. It was intended, in the proposed regulation, that respect should be had to all existing debts on the estates of the zemindars; provision was to be made for liquidating the debts, not by the sale of the zemindary, but by appropriating the revenues.

278. Do you mean that in your opinion there ought to be a regulation generally preventing the sale of lands for debt, or that it should be confined to the large zemindaries?—It was intended all the large zemindaries should be embraced, and provision should be made by which the government should be able to admit other properties to the benefit of the same regulation.

279. Was it to be property generally, or of a considerable amount?—Only landed property of considerable amount.

280. What you would call the landed aristocracy of the country?—Yes.

281 Has it been found that the system of sequestrating the estates under the collector has answered as well for the interests of the public revenue as the system of putting to sale lands of the deficient zemindary?—A former answer I think meets that question. I stated, as far as the revenue was concerned, the system answered equally well; and a great deal better, as far as the interest of the country is concerned. In point of fact, it has answered better: the estates in various instances have been restored to the zemindar after recovering all arrears of revenue.

282. Is it not sufficient that, without taking the power of sale from government, there should be a practice by government to sequester as far as possible, but with a power of sale, supposing the exigency to be such as to require that extreme measure?—The revenue can never be much in arrear; it is not like private debts; it is only one year's collection, for the collector can immediately take possession.

283. Can he always realize the amount from the produce of the year?—He retains possession: the arrears of one year's revenue could always be realized in the two following years; there never would be a hazard of incurring loss.

284. Would there be harm in holding over the zemindar the possibility of ultimate loss of his land?—The proposed regulation was, to make a provision that the estate

estate was to be liable to be sequestrated for a time, until the revenue was recovered; and the estate was liable to be forfeited for failure in allegiance, but not for arrears of revenue.

285. Would there be no danger lest the knowledge, on the part of the zemindar, that he could in no case of mere deficiency forfeit his land, should render him less careful to satisfy the demand of the government?—I do not apprehend that any hazard would be incurred on the part of the government as to realizing its revenue. These zemindaries are not heavily assessed to government, and the remedy would always be at hand as soon as the arrears took place.

286. Have you ever considered how far it would be practicable, in the place of the two judicial systems which subsist in India, one that of the Supreme Court, the other that of the Company's courts, to establish one system sufficiently comprehensive to include both the administration of justice in the presidencies and that throughout the provinces?—I have had some occasion to consider the question, by having perused papers that were written on it by the members of government and Judges of the Supreme Court at Calcutta, at the period when the question was under their consideration.

287. What is your opinion as to the practicability or expediency of such a change of system?—I can hardly say that I am entitled to entertain any opinion upon the subject; I consider the object to be extremely desirable, but it was evidently encompassed with a great deal of difficulty.

288. Is not a good deal of difficulty produced by the present system?—A great deal of difficulty; which was shown by the papers written on the subject, and which in fact led to the consideration of it.

289. Have you known instances of something like a conflict of jurisdictions?—Much less of that than might have been anticipated from a consideration of the real anomalies and embarrassments of the present system.

290. Would further consideration enable you to give any ideas to the Committee on that subject?—I am not aware that I should be able to throw any new light on it: my general impression was, that the object was not impracticable, and that vast benefit would ensue from its accomplishment.

291. What is the species of difficulty you would apprehend from having such a change of system?—The main difficulty in civil matters regards the introduction of a new class of proprietors; Englishmen, Europeans, whose rights are to be mixed up with and fastened on to those of the natives. With respect to the criminal jurisdiction, and in some measure the civil also, the difficulty consists more in the establishment of judicatories capable of administering the law.

292. You conceive the greater part of the difficulties which must be apprehended, arise from the circumstance, that in point of fact two systems have subsisted up to the present time?—I am not aware that much difficulty would arise from that circumstance.

293. By going from one system to another, you have introduced the English law into the presidencies; and to have one uniform system you must substitute more of the native, must you not?—There would be some difficulty from the change, but I do not apprehend that serious difficulty would arise from that circumstance. I think the difficulty is inherent. The difficulty, I conceive, is to form a system of law

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law that will suit the rights of Englishmen, Hindoos, Mahomedans, and all other classes of people, so as to be at all reconcileable to those existing rights which they now enjoy. If any respect is to be had for their existing rights, I imagine immense difficulty will be found in framing a system of law on which property, held according to those rights, may be transferable from one class of the community to another.

294. Would not the same difficulty exist in framing a system of law for the country at large, supposing there were a great increased number of European settlers?—I apprehend that would be a serious objection to the admission of European settlers into the country.

295. In what way does it constitute an objection?—It constitutes an objection, in the first place, on the ground that has been now adverted to, the difficulty of framing a law applicable to this new class of inhabitants; secondly, because the new class of inhabitants will belong to the dominant party in the state, and form a class which never can coalesce with the indigenous inhabitants, the present natives of the country: they will be favoured by the Legislature, as they have been since the operation of the opening of the trade has led to the introduction of a greater number of settlers than formerly; they will be favoured by the Government of the mother country; and lastly, I think it would be impossible to establish tribunals throughout the districts which might be occupied by English settlers, competent to administer criminal and (in large and difficult cases) civil law over Englishmen. I cannot conceive that the British Legislature would give the power to a young English gentleman, in one of the Indian courts, to try his countryman for his life, or still more, that that power would be delegated to native tribunals, if they were invested with such a jurisdiction over the natives. I think, even if the local magistrates had the power given to them, they could not exercise it; there would be so much obloquy annexed to it, so much scrutiny of their proceedings, so much jealousy entertained against them, they could not venture to exercise such an authority.

296. Are the difficulties to which you allude in any degree felt with regard to Europeans now settled in the interior; and if not, why not?—They are felt at present, but not in the same degree, inasmuch as there are not the same number of settlers, and as the local tribunals exercise a very limited jurisdiction over Englishmen; higher cases are required to be submitted to the Supreme Court at the presidency, which in many instances amounts to an absolute denial of justice.

297. If the administration of justice, in the case supposed, would be objected to on the part of the European settlers, do you conceive that it would not now be reasonably objected to on the part of the natives who are actually subject to the jurisdiction of the country courts?—Not, I think, in the same degree; but to a very great degree I consider that jurisdiction defective.

298. Then you do not conceive, that for the interests of the natives, and without any reference to the increased introduction of European settlers, the system of these country courts ought to be improved?—Certainly; but the improvements, according to my notions, would render the tribunals still less adapted to the trial of English settlers, for the improvement ought to consist mainly of the transfer of the existing judicial duties to natives.

299. Could

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299. Could it not be provided that the permission to Europeans to settle in the country should be restricted by the condition, that they should submit to the jurisdiction of the country courts, or submit to their jurisdiction in all but a few special cases, of a very serious nature?—If all cases of a serious nature were excluded from the jurisdiction, the provision, I think, would be extremely incomplete; but I apprehend the consent of the parties would not have the effect of obviating the objections. I think the public feeling would be outraged by the idea of an English settler being liable to be tried for his life by a native of India; and I think gentlemen from this country, such as compose the civil service, if the Legislature gave them the power, could not venture to exercise it; they would shrink from their duty.

300. Would it be possible, that in the case of Europeans, or even in case of natives, juries might to any extent be employed in these country courts?—If a good system of jury trial could be introduced, that would obviate the evil; but I apprehend there would be as great difficulty in establishing a system of jury trial as in improving the present system, for the purpose of rendering it applicable to the trial of English settlers.

301. Do you think, that if native juries were established in India, that they would be apt or otherwise to decide exactly as directed by the judge; do you think that the judge would have more than a proper influence over the jury in respect of their decisions?—In some cases I dare say he would have too much, and in others too little. On the subject of native juries, I beg to refer to my letter before the Committee, of the 30th of January.

302. Do you think that the natives of India could safely and beneficially be entrusted with the exercise of the duties of justices of the peace?—Over the natives; I have not the least doubt, on the Madras establishment, there is a supply of competent natives for the exercise of those duties over the natives.

303. Do you think that they could be entrusted with the exercise of those duties over Europeans?—I think it is very desirable, if Europeans settled in India, that natives should possess that power; I think it would be liable to be abused, but such instances might be corrected.

304. Do you think that the natives could have or acquire a sufficient knowledge of English law to administer that which a justice of the peace does administer to Europeans as well as natives?—I have not the least doubt that they could.

305. Do you think the natives would be gratified by having one of their own countrymen exercising the duties of a justice of the peace?—Throughout the provinces there is little scope at present for such authority; there are very few Europeans; I do not think it would be satisfactory that they should exercise it over their masters.

306. But in criminal jurisdiction, similar to that of a justice of peace, do you think it would be satisfactory to them to have that justice administered to them by a native?—I doubt whether it would at present; I rather think they would prefer the power being in the hands of the European officers of government.

307. You think they would have more confidence in having criminal justice administered to them by Europeans than by natives?—My impression is, that the natives would have much more satisfaction, and that justice would be much better administered, if the European judge had the aid of native assessors. My opinion

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is, that the European judge is not competent, without the assistance of natives to, ascertain the facts of any intricate, complicated case.

308. You are aware the system of criminal law in India is chiefly Mahomedan?—The Mahomedan law has been so much modified by our Regulations as to exist more in form than in reality. It is now proposed at Madras to discontinue altogether the Mahomedan law in the administration of criminal justice.

309. It is the same criminal law that is administered to the Hindoos and Mahomedans?—The same.

310. In all the courts there is a law officer, the moolavie, who sits and assists the judge in the investigation of matters of fact?—According to the theory of the court, rather in matters of law; the fact is to be found by the English judge, and the Mahomedan law officer is then desired to state how the law applies to the fact, as found by the judge.

311. His futhwa is in the nature of a verdict?—It is rather in the nature of a judgment of what the law is as applied to a given state of facts.

312. Does not his futhwa embrace the fact as well as the law?—It does, because the fact turns on the law: he states what witnesses are inadmissible, and what are not entitled to full credit; but the judge sets aside his scruples, and says what evidence he must admit, and in reality what facts he must take to be established.

313. He sits during the whole of the trial with the judge?—Yes, in serious matters; in minor cases the magistrate sits alone.

314. Did your plan embrace a continual change of persons as assessors, as we in this country have a continual change of persons as jurors, or did you mean that there should be some permanent persons to be employed as assessors, and to be in fact judges?—My views hardly went the length of amounting to a plan; but I was of opinion at the first it would be preferable that the number of those assessors should be limited, till a certain body of assessors were trained to their new functions.

315. Do you mean that there should be a certain number of persons from time to time summoned to discharge the function of assessors?—My idea was, that the country should not return a panel of jurors, but that there should be a very limited number selected by the officers of government, as being likely to exercise the new function in a satisfactory manner in the first instance, and that the system should be extended if the experiment was successful.

316. Your former answers suppose that the system by which the judicial situations in India, so far as Europeans are concerned, are now filled, is to continue; but supposing that system to be so far modified that the persons selected for judicial appointments should be selected from a larger number, from Europeans possibly resident in the country for other purposes, or in any way so as to give a larger field for selection, do you then suppose it would be impossible to provide for some system of justice that could embrace both natives and Europeans in the interior of the country?—It would be impossible to establish judicatories that could sufficiently administer civil and criminal justice over the very limited number of English settlers who under any system could be found in India.

317. Might not much greater care be taken to qualify for judicial situations in India those Europeans who are to fill them up?—I do not think they would be much

much fitter for the purpose if they were qualified in the highest degree; if they could be lawyers, for instance, sent out from England: with the very limited functions they would have to perform, they would hardly acquire the judicial character.

318. But you speak of young men, just going out as writers, being put in situations where they would have to administer justice to the Europeans, and then they would be jealous of that sort of jurisdiction; might not that evil be obviated if the judges were selected from a somewhat different class, and if their qualifications were better secured?—If there could be as many supreme courts, or courts of the same character as the present zillah courts, then the particular objection that has been in view would not exist; but other objections, much more conclusive against the system, would rise up. The expense would be ruinous, and I apprehend the system of English law, administered over a conquered country, or a country held as India is, would be impracticable.

319. Without supposing such a change of system, and supposing the system in other respects to be the same, might you not, by securing persons better qualified to fulfil the judicial functions, obviate the difficulty of subjecting Europeans to the rule of the country courts?—I do not imagine that the Company's civil servants are particularly ill qualified; I think it is only the circumstances of the situation that render their qualifications so extremely defective as they are; I imagine they are as well qualified as, under the same circumstances, any substitutes for them would be likely to be.

320. You are aware that no means are now taken to qualify persons to discharge the judicial functions of the interior, except the merely mental instruction given to the students at Haileybury?—That, and the preparation they go through for years after their first arrival in India, by mixing among the natives in the discharge of revenue duties, is a better education than could be obtained by more professional means. They are fitter for the duty of country judges than members of the profession from Westminster-hall, distributed over the provinces of India.

321. Do you think there would be no advantage in providing some direct instruction in India for the writers who are to fill judicial situations which they might combine with the advantage of serving in the revenue department?—My belief is, that the idea of a selection out of a limited body, like the civil service in India, is quite impracticable; the effect of it would be to make those excluded from the selection more unfit for the remaining duty. It is quite impossible to select and train up a particular class out of such a body for specific duties; it is better as it is, when they are generally qualified in a proper degree for all the functions they may be called on to perform.

322. You know that in Bengal that division does obtain?—I do not think the Bengal so good as the Madras system.

323. You know there is a training for those who intend to follow the judicial line?—They are confined to that one line; there is not otherwise much training. The Bengal officers, I believe, admit that the local functionaries are more efficient in the Madras establishment.

324. You mean the revenue officers?—District officers; I do not know that they are so well read in the Regulations.

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325. Do you think it is the impression in Bengal that justice is better administered under the presidency of Madras than Bengal?—I do not know that it is *their* impression; it is *mine.*

326. You think that is very much to be attributed to their being employed, in the first instance, in the duties of the revenue?—I think so, certainly. There is a very admirable short minute of Sir Thomas Munro's, recommending that young men, on their first arrival, should always be employed in the revenue line; and in that he points out the unfavourable impression such minds must take up of native character, where it is exhibited to them only in the light of adverse suitors; they learn nothing of the condition and character of the inhabitants of the country, and have no sympathy with them.

327. Let it be supposed that, instead of appointing a given number of young men to India, a greater number be appointed, and that either in this country or in India the fittest out of that number should be selected to fill situations of importance; do you conceive that any advantage would be gained to the service by such a system?—I do not think the selection is practicable in this country; it is impossible to tell how a young man will turn out. They are at present examined as to general education, as to having received a liberal education, and as to general capacity; beyond that, it is impossible to discover their qualifications. It very often happens that young men who distinguish themselves most in their studies, do not distinguish themselves afterwards as public officers; that their turn of mind is more towards words than things. The selection in India is impracticable, unless young men whose fate has been already decided are to be thrown back on their friends at last. There is only one practicable mode of selection of which I am aware; it has often occurred to me, and has been suggested by me in India, but it is liable to great objection. It is this: the whole public service of India, civil and military, could be thrown into one body, and a selection made out of that general mass in India. My idea was, that every man should be in the army for the first five or ten years; that he should bear a sword; and that after that period, the government, under certain restrictions, should select those who showed talents and other qualifications, such as temper and knowledge of the languages. There are great objections, and very obvious ones to the arrangement; but I am not aware of any other method by which a selection on a large scale could take place.

328. Upon an average, at what age do young men go out to the civil service from this country?—Between 18 and 20.

329. Now, you know that in this country a profession of a young man is chosen; if he is intended for the law, his profession is chosen before the age of 20, is it not?—I think it is so.

330. But might there not be, before they went, a selection; if they do not go till 20, might they not select a particular line?—Young men choose those professions before 20, but nobody can tell if they will succeed in them.

331. You think that principle of ascertaining qualifications by examination could be applied more essentially than it is in this country?—I do not consider any improvement necessary, for the young men are remarkably well educated; a great improvement has taken place within the last 20 years.

332. Do you mean to say that the system of education at Haileybury has been found to answer?—The system of education has been found to answer; the institution has been attended with a great many disadvantageous circumstances, but not in respect of education.

333. Do you think that, in order to furnish persons with education to discharge judicial functions in India, it might be desirable to prolong their stay in this country beyond the present period, to obtain instruction?—On the contrary, I would send them out young; they otherwise come out with a distaste for banishment and for native character. The great evil to be contended against is a dislike to their duty, to intercourse with the natives, and to separation from their countrymen.

334. In what manner would you obtain a knowledge of the general principles of jurisprudence, in order to qualify them for the judicial office?—As a part of general education, if it is required in a higher degree, and not obtained under the present system. One advantage must be set over against another; on the whole, I think the present system operates more beneficially than that of detaining them in this country for professional education.

335. Retaining them in this country for the purpose of instruction, would necessarily render them less fit to attain a due knowledge of the languages in India before they enter on the judicial functions?—Probably it would in some degree.

336. Do you think they could obtain in this country a sufficient knowledge?—No, I think not.

337. Arriving at a later period, they would have less aptitude for learning the languages of the country?—In some degree.

338. Not very considerable?—I think not.

339. Is there any period after their arrival in India, before which they cannot be appointed to office?—The rules have varied; the rule at present is, that a young man cannot be employed at all in public duty until he has been about two years in India.

340. Is there any other rule as to employment in a judicial situation?—I think there is; but those rules have varied, and when they have remained, they have not always been observed.

341. In whatever manner the qualification of the young man going to India is secured in this country, whether by giving him a certain course of education, or by subjecting him to a public examination, or by uniting both those methods, do you not conceive that if the numbers that went were selected out of a larger number, the amount of qualification in the whole would be better secured than by the present system, which appoints exactly so many as the service in India is supposed to require?—The advantage would not be obtained without paying for it, if you prepared twice the number that was required, or whatever the excess might be; but the advantage which would be obtained would only be that of scholarship, or a better promise on the part of the young men: how far they might possess good sense and talents for the affairs of human life and for public business, with temper, discretion and moral qualities, all that would be left still to chance; and if they went out with an idea of being better than their fellows, something would be lost as well as gained by the selection.

Veneris, 30° *die Martii*, 1832.

The Right Hon. ROBERT GRANT in the Chair.

IV. JUDICIAL.

DAVID HILL, Esq., called in and further examined.

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342. ALLOW me to ask you, on the supposition that there was an increased number of Europeans resident in India, do you think it would be impossible to frame a system of judicature which should have jurisdiction over both Europeans and natives?—I have reflected more on the general question, in consequence of my last examination, but I am confirmed in my impression of the impracticability of the measure. I conceive it would be desirable, and very easy to establish a legislature in India upon improved principles, for framing the regulations for the country courts, and on an emergency for framing laws to regulate the proceedings of the supreme courts also, subject to ulterior sanction in the mother country; but it seems to me that, under the most favourable circumstances, the measure of rescinding the whole system and provisions of the law of a community, and framing a new system and new provisions in their stead, would be attended with infinite difficulty, and be exposed to the greatest hazards of omission and collision, which could only be ascertained by experience. I think the difficulty very much aggravated by the complicated nature of the provisions of English law, as being adapted to a highly civilized and very old country. There are other difficulties that are very strongly put in a particular paper of Sir Charles Grey's, relative to points that either have not been settled, or have been settled in contrary ways at different periods and by different authorities. There would be also additional difficulties from our very imperfect knowledge of the provisions of some of the systems of law we should have to rescind and to re-establish, provisions of the Hindoo and Mussulman law. We have a very imperfect knowledge of landed tenures throughout India: they would require to be provided for also. Then there comes the difficulty most present to my mind on a former occasion, which seems to me to be of itself nearly insuperable, the difficulty of establishing a system of judicature capable of administering the law over both European settlers and natives. There is another circumstance which might either be considered as a difficulty or a facility. My impression has long been, that the government of a country held as India is, must exercise a control over the administration of the law. Whether that would facilitate the adoption of the scheme suggested, or be an additional obstacle in the way of it, may be matter of doubt.

343. To what species of control do you advert?—I mean merely that the system of judicature in a country held by the right of conquest, and by the power of the sword, cannot be left independent of control. There is no public opinion to control it, and it may, with the best intentions, operate in a manner totally at variance with the whole end of the government of the country, and with the system on which the administration of its affairs is conducted.

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344. Would it be necessary that the judges should in all cases be removable at the pleasure of the government?—My objection is quite of a different nature; I mean, that the judges, in the faithful discharge of their duty—

345. Do I understand you to say, that the judges of every kind should be removable at pleasure?—That is not what I alluded to; it was, that the government ought to possess the means of staying the proceedings of the courts of justice.

346. Do you mean to say that they should have some powers which they do not now possess?—Some powers that they do not now possess.

347. Have you thought at all of the detail or mode in which such a power could be exercised?—My general impression is, that the decrees of the ultimate tribunal ought never to be executed without being previously made known to the government, that they may interpose their authority if they see occasion, if the safety of the state and the general welfare of the community makes it necessary.

348. Do you mean that remark to apply to all judgments of the Supreme Court, or only to such as are of a political character?—By the Supreme Court, I mean the jurisdiction in the last resort. Unless all judgments were submitted, it would not be within the competency of the government to interpose their authority in cases that required such interposition.

349. You proceed on the supposition that there is one system of judicature for the whole country?—My observation is more applicable to that; but it has a certain degree of application to the constitution of things in the King's courts as it now exists. It would only be in very rare cases that the government would find ground to interpose its authority, or be justified in exercising such a prerogative.

350. Has any practical inconvenience resulted, within your knowledge, from the absence of such control on the part of the government?—With respect to the country courts, certainly there has.

351. In what cases do you think it would be within the competency of government to interpose their authority?—With respect to the country courts, I have alluded to cases that have had the effect of exciting rebellion in the part of the country to which they applied.

352. And on great public questions?—On great public questions, or on principles that grew up to be public questions afterwards, and affecting great interests. Sometimes it is a principle established by a decision which, when it comes to be generally applied, produces a great effect on the political system of the country.

353. Could you instance more particularly?—It was settled by a construction of law, that zemindars were capable of levying a certain branch of revenue called *mohturpha*, even with the sanction of the government; and by another construction of law, the object of taking confessions of prisoners was completely frustrated. Again, by the execution of legal process, rebellion was at different periods excited in two principalities in the Ganjam district, viz. Goomsoor and Moherry.

354. What, in your opinion, should be the constitution of a legislative council in India, and of whom should it consist?—I am afraid there are no other materials for such a body except the members of the government and the King's courts: it would be desirable, I think, to give it a broader foundation, if there were the means of doing so.

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355. Would it be possible to include persons having no connection otherwise with the government, who should be considered in a similar sense as if they were acting on the part of the native inhabitants?—I conceive that there are no parties in India capable of protecting the rights of the natives, as things now are, excepting the public functionaries, who would be represented properly and adequately by the members of government.

356. Will you state any general ideas that you have either upon the functions or constitution of such a council?—I am not aware that I have any further ideas than to express my perfect concurrence in the views adopted by the judges of the Supreme Court on that subject, as distinct from the further question of new modelling the law of England and the law of India, and of framing a substituted system out of them.

357. Do you think it would be open to no objection, to invest the judges with legislative functions?—If it be open to some objection, I think, upon a balance, it would be attended with very great advantage. I think the system at present is totally unfit for the purposes of legislature. The acts of the legislature are merely acts of the executive government, and are framed in the same precipitate manner, on the urgency of the occasion.

358. Are not certain of the Regulations submitted to the judges of the Supreme Court, before they are carried into effect?—The Regulations for the good order and civil government of the three presidencies require the concurrence of the judges of the Supreme Courts respectively, and the judges of the Supreme Court of Calcutta have also construed the law to render their concurrence necessary in passing Regulations for imposing additional duties. The Regulations for the country courts require no concurrence on the part of the Supreme Court, but are passed by the sole authority of the Indian governments.

359. What do you conceive would be the advantage of a legislative council?—I think the first advantage would be, that the duty of legislation would be performed in a much more deliberate manner. The next advantage would be, that with the aid of the judges, the principles of law and of justice would be much more regularly observed than they are likely to be by an executive government, which legislates on the impulse of the moment.

360. Do you not also conceive, that in certain cases the delay and circuity of a reference to Parliament would be saved?—My answer had reference to the Regulations for the country courts. With respect to the Supreme Court, there is a third advantage this question points out, which in effect would supply a great deficiency in the present system of legislation: the delay is so great as to amount to an absolute obstruction of legislation. One Governor-General, Lord Minto, at the end of his government, when on his return to England, stated to me, that owing to distance and delay, he found it to be impracticable to obtain legislative enactments on points on which there was not the least question as to the propriety of their being passed.

361. Did the unfortunate disputes which took place at Bombay between the government and the judges, attract much notice in other parts of India?—Not generally through India; not much at Madras, even in English society; at Bombay of course it did, and I believe also in Calcutta, where they have a much greater turn for political discussion.

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362. Are you aware whether the question had arisen at Madras, whether the Supreme Court had power to issue writs of any kind into the provinces?—I think not. In argument it may; but practically, I think it had not arisen. There were legal methods by which matters adjudicated by the country courts were brought within the jurisdiction of the Supreme Court: this was by the dextrous management of the practitioners in the Supreme Court, and not by any encroachment of the court itself, or desire to extend its jurisdiction.

363. Is there a disposition in the natives of India to look to the Supreme Court as a sort of defence to them against the government?—At the Presidencies, very likely, as there it is the only jurisdiction; throughout India, certainly not; in the provinces, certainly not: I do not believe generally they know anything about the matter; but where they do, I imagine they only look on it with terror, as an unseen instrument likely to involve them in ruin; I fancy they generally know nothing about the matter.

364. Your observations are confined to the Madras presidency still, are they not?—I have probably taken a wider range in some of my answers, for my means of loose information were gathered chiefly at Calcutta, during my last residence in India.

365. When you say that you should suggest that the judges should have legislative powers, do you mean that it should only be a sort of superintendence over legislative enactments?—According to the projected scheme, the judges were to be constituent members of the legislative council; and the majority of the judges were, in certain cases, to possess a description of veto in the exercise of its authority, in cases where they stated their opinion to be, that the proposed enactment was at variance with the law of England.

366. Would they have time to exercise that judicial legislative power?—As to framing a new code in lieu of the codes to be extinguished, I imagine that would not have time, neither they nor anybody else; but for substituting this mode of passing Regulations for the country courts for what exists now, and also for the passing emergent laws to regulate the proceedings of the Supreme Court, pending a reference to the authorities in England, I imagine they would have abundance of time; probably it would save them time in their judicial functions.

367. You are aware that the idea is entertained by many persons, that the introduction of European settlers into India is not only practicable but would be advantageous; are you able to state to the Committee any general ideas upon that subject?—The advantages to arise from the settlement of Europeans in India have been wonderfully exaggerated: I estimate them very low indeed. The process used to go by the name of Colonization; now, I believe, the principal recommendations of the scheme are considered to be the transfer of British capital, and skill and enterprise, for the purposes of drawing forth the resources of India. I have no conception that any British capital would ever find its way to India: it never did when the temptation was much greater than it can now be expected to be; and the distance of our empire, the uncertain tenure by which we hold it, the alarms connually springing up as to events endangering its stability, will effectually prevent British capitalists from transferring their funds to India. In that case, there remain only the skill and enterprise of Englishmen. According to my conception, they

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will be very far behind the natives in most departments to which skill can be applied. There are physical difficulties in the way of their undertaking manual labour, which must exclude them from being agriculturists or mechanics in India; for I imagine that a farmer who never held the plough in his hand, and who was transferred to a country where the climate, and the system of agriculture and the products of the earth are all different from what he has been accustomed to, could never cope, in point of skill, with the natives of the country. I imagine that the ryots of India are much better husbandmen than European settlers would be. So it would be as to mechanics also. There remains only the object of stimulating and directing the exertions of the natives themselves; an object which falls very far short of the sanguine expectations of the advocates of the system of free resort of European settlers to India, and an object which, under the present system, seems to me to be attained to its full extent, or under the present system admits of being carried to any further extent which may be deemed necessary. Then there will arise objections to the system connected with the bad characters which would go: if none but good characters went, they would be doing harm to themselves, but would not do any harm to India. A man of good conduct and capacity could not injure India; but my impression is, that as it would be a bad speculation to the settlers, many would forfeit the good character they took out with them, and many others would find their way to India who were bad subjects, difficult to govern, and not capable of conferring any benefits on the country they visited.

368. You are aware that the Company have generally been averse to the principle of exporting British capital to India?—I am not aware of that.

369. At what period was there more facility or temptation for exporting British capital into the provinces of India than at this moment?—When the rate of profit was much higher than it now is, or is likely ever to be again; when with the greatest ease 20 per cent. might be made in the money market of India, where five or six now is a fair remuneration.

370. Did not the system of the Company, by impeding Europeans from settling in India, oppose obstructions to the introduction of European capital into that country?—Probably the obstructions to the resort of Europeans may, in some measure, have tended to prevent British capital from being transferred there; but I should think, if the inducements had been sufficient, there were no obstructions that would have been effectual.

371. Are there now Europeans in the presidencies who, if greater facilities were allowed, would engage in agricultural or manufacturing speculations in the interior of the country?—I am not aware that there are, or that there is useful scope for a greater number. I think they would supplant better men in the persons of natives who are now employed in those pursuits.

372. In point of fact, are there not many Europeans at the presidencies who are calling out for greater facilities?—There are a great many more Europeans in India now than can find useful employment.

373. Are they not cut off from a great variety of the employments of the country?—I think not: they are prevented from acquiring real landed property.

374. They are not allowed to move freely in the interior of the country?—As long as they behave themselves well, I think they are. They are not allowed as matter

matter of right, but in practice there is no difficulty, so long as they are supposed to conduct themselves well.

375. Do you think that any advantage would arise from conferring upon the half-caste race any rights or privileges which they do not now enjoy?—If they are not allowed to acquire landed property, I think they ought to be. They have a much better claim to consideration than European settlers, for it is their native country; but I am not sufficiently acquainted with any obstructions in the way of their prosperity, to say what relief they require; I think they ought to be placed on a footing with the natives of the country.

376. When you say that in some cases Europeans, if allowed to go into the interior, might supplant the natives, how do you reconcile that statement with your former opinion, that the natives generally will be found to cope successfully with the Europeans in regard to the produce of the interior?—Still I conceive that through the patronage of their countrymen, connection by blood, or by friendship, or recommendation, they would be preferred to situations that might be more fitly occupied by natives. I think that the labours of the land must still be performed by the natives, for the constitution of an European physically incapacitates him from taking the place of the native; but there are higher situations which are at present filled by natives that might be transferred to Europeans, through favour shown to them by their countrymen.

377. Where does the capital employed by the indigo planters come from?—It is accumulated in India exclusively.

378. Then what part in the undertaking of the indigo plantation does the British settler act; is it his skill, or what is it?—I think it is his enterprise in the direction that he has given to the labours of the people; he has found out a commodity which has been profitably raised.

379. Europeans having settled in India, and made establishments there for the plantation of indigo, contemporaneously with that there has been a great increase of indigo, and great good has resulted to those parts of India from it?—This result has followed from the present restrictive system, and has been carried to the utmost extent, so that indigo is now at a price that does not remunerate.

380. At the same time, the average result on the whole has been that of an extended cultivation, and great good to those parts of India where it has been carried on?—That has arisen under the present restrictive system.

381. Do you attribute that to the restrictive system?—Not to the restrictions of the system; the indulgence is quite compatible with the operations of the present system.

382. Do you mean that the law should be made different so as to grant them more indulgence, or without any alteration of the law, would you wish for a further introduction of Europeans into that country?—I believe that little or no alteration of the law is necessary, for the present system is sufficient for the purpose.

383. Are there not other products which might be cultivated with considerable advantage, if they were undertaken and prosecuted by English skill and capital?—According to my conception, Europeans could do nothing to promote the more skilful culture; they could not prepare the ground for cotton. The European merchants

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at Calcutta have tried the rearing of cotton and sugar with very little advantage to themselves.

384. Has the import of East-India cottonin to this country increased?—It has fallen off very much.

385. Why should not the same principle apply to the cultivation of cotton, as has been found practicable in the case of indigo?—I imagine that the climate and soil are not adapted to the produce of cotton and sugar, in comparison with the other quarters from which supplies are drawn.

386. Did you ever hear the opinion of any manufacturers at Manchester, or any person in the habit of importing cotton to Liverpool, on this subject?—I am not aware that I have; I believe Indian cotton is held in very low estimation.

387. What is your idea with respect to giving Europeans power of holding land in India?—I see no possible benefit to accrue from it, and a great deal of embarrassment.

388. If they held the land by the tenure which it belongs to, what embarrassment could be the consequence?—I do not see how they could. If English tenures and Indian tenures were once mixed together, I think that a question already very difficult would be made still more so; and I see no advantage that would arise from it.

389. Would a law authorising them to hold land in India produce any positive mischief?—According to my apprehension, it would. The English settlers belonging to the ruling party in the state, would have influence enough to have laws framed and executed so as to favour them at the expense of the landholders, who belong to the conquered part of the community; and in that way I think it would be a serious evil to India, a wrong committed against the natives of that country, and for no advantage, as far as I am aware. They have the fruits of the land as it is; and, considering what physical disadvantages they labour under, and what political evils would ensue from allowing a free resort of Europeans to India, I think nothing would be gained, and only loss would be incurred by changing the law in that respect.

390. It would not follow that, because they were admitted to hold land, they should be permitted to have an indiscriminate resort of Europeans into the interior?—It is not a necessary part of the system; still it does form a part of the scheme.

391. Have many disputes arisen between the indigo planters and the natives?—There are constant disputes.

392. What is that attributable to?—It is not easy to say; it seems to me very like the condition of society in Ireland, where the law derives no aid from popular feeling; there is continual warfare.

393. Is it owing to the misconduct of the settlers?—That has only an accidental share in it; that is not the root of the evil. It seems to originate in the necessity of making advances to the poor cultivators; and then the produce, which ought to be delivered in return for those advances, is bought up by some interloper, and armed parties are taken out to carry it off by force, or repel the intruder.

394. Does it result in any degree from the uncertainty of the proprietary of the land?—The disputes regarding boundaries are very frequent.

395. Has the settlement of the indigo planters been productive of benefit to those portions of India where they are settled?—I have no means of knowing myself, but I have understood it has. The appearance of the country has improved; I believe the condition of the people has not. The land is more highly cultivated.

396. What is the general feeling of the natives as to the administration of justice by the country courts; is it a feeling of confidence in these courts, or otherwise?—Not of satisfaction, certainly; they have been generally felt to be extremely irksome; I mean the zillah courts.

397. What is the nature of the improvements that you would suggest in the constitution of these courts?—My general impression is, that all justice ought to be administered by the natives themselves, who are much more competent to do it, and who would do it on more easy terms than it can be supplied from any other quarter.

398. What is your opinion as to appeals?—My general idea as to that is, that the English officer ought not to exercise the appellate jurisdiction, but when necessary should direct a new trial, transferring the cause to another native judge; that the British superintendent, if he sees fit on any ground, should, without going himself into the merits, order the cause to be tried again by a higher tribunal, in the nature of an appeal, or by the same or another tribunal, in the nature of a new trial.

399. This is a principle recognized already by some of the native courts, is it not?—I am not sure that new trials are in practice with us, which would be a great improvement; I think they are always appeals.

400. Is not there a power of some superior court sending back the case?—I am not certain as to that; I think there is a great defect in the system of appeal generally in India, but I am not lawyer enough to be sure that my notion is correct. The whole evidence is recorded, and the superior court reads over that which the original court has heard, and comes to a conclusion, not upon any particular point of fact or of law that has been excepted against by the losing party, but on the whole merits of the case; the appellate court tries on reading the same evidence as the original one tried on hearing.

401. You have already been asked with respect to the age at which you would send young men to India?—I think I stated before, that I did not imagine it would be an advantage that they should be kept longer in England than from 18 to 20; I think that would not be an improvement.

402. Suppose a system by which young men of apparent talent for the legal profession should be selected, and should have education in the principles of general law in England for a year or two, and then that their knowledge should be perfected in India for a year or two, by a more particular application of the principles of the law of that country; do you not conceive that that would effect a very material improvement in the general administration of justice?—Not according to my idea; I conceive the improvement that is necessary in our judicial system in India is to transfer the functions of judges to natives; I conceive also that the great *desideratum* in the office of the public functionaries of the Indian government is a knowledge of the native character, language and manners, and a sympathy with

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with the people among whom they are to live, and a taste for their official duties; I am quite convinced that all these advantages would be forfeited by high legal attainments.

403. Could not the two qualifications be made compatible in a greater degree than they appear to be at present?—The general qualifications might perhaps be attained in a higher degree by greater care in the selection of young men sent out to India; the legal qualifications would be a little or no advantage, according to my view, as I conceive the legal functions ought not to be in the hands of European functionaries; that it would be totally impossible to pay an adequate number, and if obtained, they never could be so competent to perform the duties as natives, who might easily be instructed in them.

404. In what way would you employ Europeans in the administration of justice in the interior of the country?—I would merely make them, in the administration of justice as in every branch of civil administration, the links by which the system of internal administration is connected with the government of the country.

405. Have you at all calculated what would be the reduction of the number of Europeans now employed in the judicial department?—According to my recollection regarding the Madras presidency, there have of late years been about 30 judges in our districts; independently of these judges we have assistants, called registrars, who are totally unfit, in my estimation, to exercise judicial functions, being too young and inexperienced. Instead of having about 30, according to my impression, 20 would be ample, which would make a reduction of one-third.

406. And do you think, besides the saving of expense, the object would be better accomplished?—I am quite convinced it would, and that 30 accomplished natives would do a great deal more than 30 Europeans, such as can be obtained.

407. How would you effect the transition from the present system?—It is in progress already at Madras.

408. Has there been a diminution in the number of persons sent out?—Yes, there has.

409. Do you think that experiment would be injured by the free resort of Europeans into the interior?—I think that this improved system would not be applicable to such a condition of society.

410. You could not carry into effect the proposal of having native judges, if Europeans had a permanent freedom of settling?—I stated that impression on my last examination.

411. And you stated that the younger persons go out to India the better?—Not to that extent; but it is desirable that they should go out young.

412. Suppose they go out very young, do you think it would be best to employ their previous time which they pass in England in studying Indian institutions, or Indian law, or the Hindostanee language, or acquiring general knowledge?—Certainly, general knowledge.

413. If Europeans are to exercise this sort of controlling or superintending power over native decisions, ought not they to learn some general principles of jurisprudence?—I think, if you could get that without losing anything else, it would be all the better; but I consider it a very secondary qualification for a ruler of the land.

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414. Have you any further suggestions to offer to the Committee relative to the improvement of the system of judicature in the administration of India?—My views are of a very simple and summary description. I conceive that throughout the provinces justice ought to be administered by natives, who are to be found perfectly competent to the office; that there should be a gradation of native judicatories, one class having jurisdiction over another; and that the operations of the whole should be superintended by British functionaries, who should connect the system of internal administration with the government which rules the empire. I ought to explain, in the way of apology for some of my notions, that I look upon India entirely as a conquered country, which cannot enjoy the advantages of a constitution of balance and check among its several parts, but must be kept under an absolute government. I conceive that all ideas of perfectibility in its institutions are quite inapplicable to the condition of the case. My impression accordingly is, as I have stated on another occasion, that no system ought to be rejected merely because it has a great many faults, as I am quite aware my scheme has. I think our position in India so forced and unnatural, that all our institutions must be extremely defective. They are only enthusiasts, as the advocates of some particular system, who imagine for the time that they have found out one that is faultless. In judging of any one of the plans for assessing and collecting revenue, for administering justice, for preserving peace and good order, we must first weigh its defects against its merits, and then against the defects of any rival plan; the best we shall have in the end will be a balance in favour of what we prefer.

415. Since your system supposes the more extensive employment of natives in the administration of justice, do you suppose that the effect of such an extended employment of natives would be, by whatever gradations, to ultimately throw the government of India into the hands of the natives?—My views on that point are, that the natives ought to be brought forward in the government of their own country, as far as they are capable of being so by their moral and intellectual qualifications, subject only to the security of the empire, so long as we are to retain it. My views would therefore bring them forward certainly in the administration of the affairs of the country, but would not have the effect of placing political power in their hands.

416. Supposing them to improve in general intelligence and knowledge, do you conceive that the effect would not be to endanger the stability of the British power?—If that effect naturally resulted from a more liberal system towards the natives, I think it is a consummation most ardently to be desired. I do not think the measures I have suggested would be likely to place power in the hands of the natives before they were fit to use it. I have no conception that any English statesman, who turns his attention to the subject, would for an instant entertain the idea of keeping India in a debased and degraded state, in order to perpetuate or prolong our empire.

417. On the contrary, you would be prepared to suggest a system which might ultimately have the effect of completing the transition of power from our hands to those of our present subjects?—That I should think a most desirable result, but I see no prospect of it.

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418. Do you conceive that there has been a very remarkable change within the last 30 years in the character of the natives and their intellectual acquirements, or at least of those of the natives who are connected with the presidencies?—In some respects; at Calcutta, for instance, there is a marked improvement in the system of European education among the natives; but I should not think their intellectual faculties are much improved; these are shown to most advantage in natives who have generally had little intercourse with English society. The ablest natives are those who do not know the English language.

419. At the presidencies, have they not in some measure learned to criticise the proceedings of government, and to entertain and deliver opinions respecting political matters?—In Calcutta they have to a limited extent, but sometimes it is done by Europeans in their names.

420. That has not been done in the presidency of Madras?—Not more than was done 30 years ago.

Martis, 3° die Aprilis, 1832.

ROBERT CUTLAR FERGUSSON, Esq. in the Chair.

HOLT MACKENZIE, Esq. called in and further examined.

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Holt Mackenzie, Esq.

421. HAVE you brought with you a translation of the Persian statement to which you referred in your last examination, respecting the expenses of suits in the different courts in India, the Zillah, the Provincial, and the Sudder Courts?—Yes, I have.

[*The Witness delivered in the same. Vide Paper* (A.)]

(A.)—Cost of Suit and Defence in the Zillah Court.

COST OF THE PLAINTIFF.

THING SUED FOR.	Value.	Institution Stamps.	Miscellaneous Stamps.	Pay of Peons and Ameens.	Vakeels' Fees.	Witnesses' Maintenance.	TOTAL.
	Rupees.	*Rupees.*	*Rupees.*	*Rupees.*	*Rupees.*	*Rupees.*	*Rupees.*
150 Begahs of Land paying Revenue	930	50	9	80	46	9	194
A Talook	129	8	11	15	6	- -	40
250 Begahs of Alluvial Land	250	32*	13	13	12	6	76
300 Begahs of Land	525	32	64 ½	3 ½	26	35	161
Share of a Talook	673	32	24 ½	23	34	7	120
Debts	840	50	13 ½	5	42	- -	110 ½
Ditto	1,664	100	8 ½	1	83	- -	192
Ditto	1,000	50	9 ½	- -	50	- -	109 ½
Ditto	1,262	50	15 ½	1 ½	64	- -	131
Bond Debt	1,500	50	12	- -	75	- -	137
Rent-free Land	686	32	14	5	34	- -	85
Ditto - 77 Begahs	631	30	26	99	32	21	207
Ditto, quantity not specified	1,647	60	13	1	75	4	154
Ditto - ditto	527	25	5	5	26	4	65
Ditto - ditto	1,237	51	16	1	61	- -	194

* There appears to be some mistake here; the proper stamp being only 16 rupees.

COST OF THE DEFENDANT.

THING SUED FOR.	Value.	Stamps.	Pay of Peons and Ameens.	Vakeels' Fees.	Witnesses' Maintenance.	TOTAL.	TOTAL of both Parties.
	Rupees.	*Rupees.*	*Rupees.*	*Rupees.*	*Rupees.*	*Rupees.*	*Rupees.*
150 Begahs of Land paying Revenue	930	22	5	46	17	90	284
A Talook	129	6	- -	6	- -	12	52
250 Begahs of Alluvial Land	250	- -	- -	12	- -	12	88
300 Begahs of Land	525	32 ½	2 ½	52	- -	87	248
Share of a Talook	673	21 ½	13	34	6	74	194
Debts	840	- -	- -	- -	- -	- -	110 ½
Ditto	1,664	9	- ½	83 ½	- -	93	285
Ditto	1,000	17 ½	4	50	- -	71	180 ½
Ditto	1,262	11	1	64	- -	76	207
Bond Debt	1,500	2	- -	75	- -	77	214
Rent-free Land	686	16	- -	34	32	82	167
Ditto - 77 Begahs	631	20	108	32	-	164	371
Ditto, quantity not specified	1,647	5	- -	75 ½	- -	81	235
Ditto - ditto	527	15	- -	26	- -	41	106
Ditto - ditto	1,237	18	- -	61	- -	79	208

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Cost of Parties in the Court of Appeal.

APPELLANT.

THING SUED FOR.	Value.	Institution Stamps.	Miscellaneous Stamps.	Peons and Ameens.	Vakeels' Fees.	Witnesses' Maintenance.	TOTAL.
	Rupees.	*Rupees.*	*Rupees.*	*Rupees.*	*Rupees.*	*Rupees.*	*Rupees.*
150 Begahs of Land paying Revenue -	930	50	6	- -	46	- -	108
A Talook - - -	129	8	6	- -	6	- -	20
250 Begahs of Alluvial Land - - -	250	32	5	1	37	- -	76
300 Begahs of Land -	525	32	13	- -	26	- -	71
Share of a Talook -	673	32	13	2	34	- -	81
Debts - - -	840	50	12	1	42	- -	105
Ditto - - -	1,664	100	26	- -	83	- -	210
Ditto - - -	1,000	50	6	2	50	- -	108
Ditto - - -	1,262	50	63	- -	75	- -	188
Bond Debt - -	1,500	50	21	- -	75	- -	146
Rent-free Land - -	686	32	44	2	34	5	118
Ditto - 77 Begahs -	631	32	12	2	31	- -	77
Ditto, quantity not specified	1,647	100	14	2	148	- -	263
Ditto - ditto -	527	50	30	- -	47	- -	127
Ditto - ditto -	1,237	50	29	- -	62	- -	141

RESPONDENT.

THING SUED FOR.	Value.	Miscellaneous Stamps.	Peons. and Ameens.	Vakeels' Fees.	Witnesses' Maintenance.	TOTAL.	TOTAL of both Parties.
	Rupees.	*Rupees.*	*Rupees.*	*Rupees.*	*Rupees.*	*Rupees.*	*Rupees.*
150 Begahs of Land paying Revenue -	930	6	- -	46	- -	52	154
A Talook - - -	129	7	- -	6	- -	13	33
250 Begahs of Alluvial Land - -	250	5	- -	37	-	42	118
300 Begahs of Land -	525	9	- -	26	- -	35	106
Share of a Talook -	673	9	- -	34	- -	43	124
Debts - - -	840	5	- -	48	- -	53	158
Ditto - - -	1,664	5	- -	83	- -	88	298
Ditto - - -	1,000	1	- -	50	- -	51	159
Ditto - - -	1,262	12	- -	75	- -	87	275
Bond Debt - -	1,500	12	- -	75	- -	87	233
Rent-free Land - -	686	43	1	34	3	81	199
Ditto - 77 Begahs -	631	- -	- -	- -	- -	- -	77
Ditto, quantity not specified	1,647	19	- -	148	- -	167	430
Ditto - ditto -	527	17	- -	47	- -	64	191
Ditto - ditto -	1,237	15	- -	62	- -	77	218

EXPENSES in the Sudder Court.

APPELLANT.

THING SUED FOR.	Value.	Institution Stamps.	Miscellaneous Stamps.	Vakeels' Fees.	TOTAL.
	Rupees.	*Rupees.*	*Rupees.*	*Rupees.*	*Rupees.*
150 Begahs of Land paying Revenue	930	50	32	46	128
A Talook	129	8	30	6	44
250 Begahs of Alluvial Land	250	32	39	37	108
300 Begahs of Land	525	32	30	26	88
Share of a Talook	673	32	42	34	108
Debts	840	50	30	63	143
Ditto	1,664	100	22	83	205
Ditto	1,000	50	30	50	130
Ditto	1,262	50	30	64	144
Bond Debt	1,500	50	52	75	177
Rent-free Land	686	32	40	34	106
Ditto - 77 Begahs	631	50	56	49	155
Ditto, quantity not specified	1,647	100	31	148	279
ditto ditto	527	50	24	47	121
Ditto ditto	1,237	50	40	62	152

RESPONDENT.

THING SUED FOR.	Value.	Miscellaneous Stamps.	Peons and Ameens.	Vakeels' Fees.	TOTAL.	TOTAL of both Parties.
	Rupees.	*Rupees.*	*Rupees.*	*Rupees.*	*Rupees.*	*Rupees.*
150 Begahs of Land paying Revenue	930	28	28	46	102	230
A Talook	129	26	- -	6	32	76
250 Begahs of Alluvial Land	250	22	- -	37	59	167
300 Begahs of Land	525	36	- -	26	62	150
Share of a Talook	673	32	- -	34	66	174
Debts	840	20	- -	63	83	226
Ditto	1,664	18	- -	83	101	306
Ditto	1,000	20	- -	50	70	200
Ditto	1,262	22	- -	64	86	230
Bond Debt	1,500	44	- -	75	119	296
Rent-free Land	686	- -	- -	- -	- -	106
Ditto - 77 Begahs	631	38	- -	49	87	242
Ditto, quantity not specified	1,647	26	- -	148	174	453
Ditto ditto	527	14	- -	47	61	182
Ditto ditto	1,237	24	- -	62	86	238

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SUMMARY.

THING SUED FOR.	Value.	Costs of Parties in the Zillah Court.	Costs of Parties in the Court of Appeal.	Costs of Parties in the Sudder Court.	GRAND TOTAL.
	Rupees.	*Rupees.*	*Rupees.*	*Rupees.*	*Rupees.*
150 Begahs of Land paying Revenue - - - -	930	284	154	230	668
A Talook - - - - -	129	52	33	76	161
250 Begahs of Alluvial Land	250	88	118	167	373
300 Begahs of Land - -	525	248	106	150	504
Share of a Talook - -	673	194	124	174	492
Debts - - - - - -	840	110 ½	158	226	494 ½
Ditto - - - - - -	1,664	285	298	306	889
Ditto - - - - - -	1,000	180 ½	159	200	539 ½
Ditto - - - - - -	1,262	207	275	230	712
Bond Debt - - - -	1,500	214	233	296	743
Rent-free Land - - -	686	167	199	106	472
Ditto - 77 Begahs - -	631	371	77	242	690
Ditto - quantity not specified - - - -	1,647	235	430	453	1,118
Ditto - - ditto - -	527	106	191	182	479
Ditto - - ditto - -	1,237	208	218	238	664

422. Did the suits which are here mentioned take place in any particular year?—No, they were taken indiscriminately.

423. For how many years?—They are from cases tried by the Sudder Court in various years subsequently to 1814; but the four last were instituted at an earlier period.

424. Was the Persian paper from which this translation was made obtained from the records of the Sudder Dewanny Adawlut?—It was compiled from the records of the Sudder Dewanny Adawlut, under the orders of the Registrar. The costs of suit in the several courts are always recorded in their respective decrees, with an order as to the party that is to pay them; and it was from the record of the decrees adopted in the Sudder Court that the different items were taken.

425. Were they taken indiscriminately from the whole number of causes of which there are records in the three courts, since 1814?—They are all cases which reached the Sudder Court after passing through the two subordinate courts; but out

out of these they were taken indiscriminately, the object being to get, as far as the Sudder records afforded it, a fair average of the charges of such suits.

426. Is the institution stamp a per-centage on the amount sought to be recovered?—No, not a per-centage, but a sum varying according to the amount or value of the property claimed.

427. Of what are the articles called the miscellaneous stamps composed?—The miscellaneous stamps are those chargeable upon miscellaneous petitions, applications for the summoning of witnesses, and for the filing of exhibits. I do not mean the stamps required to be used on the execution of the instruments that may be exhibited, of which various descriptions must be written on stamped paper, as will be found defined in the stamp regulations; but I now refer merely to the stamp which must be borne by applications for the admission of exhibits in suits.

428. In what manner are the peons paid?—In general by a daily allowance; and the same course is followed in regard to other persons deputed for any local duty relating to the suit. The fifth and corresponding columns include both descriptions of charge for cases in which both have been incurred; and in the first of the cases it is probable that an ameen, or commissioner, was deputed for the purpose of some local inquiry respecting the lands in dispute.

429. Do you apprehend so from the amount?—Yes, from the amount.

430. Are the vakeels' fees also regulated by a per-centage on the amount sought to be recovered, or on the amount recovered?—Up to 5,000 rupees, five per cent. is allowed on the amount or value sued for. When the amount or value exceeds that sum, the fee is regulated by a somewhat complicated calculation, until it reaches 1,000 rupees, the fee on a suit for 80,000 rupees or more.

431. What is the lowest institution stamp in any cause that is instituted in the Zillah Courts?—One rupee.

432. For what sums is that?—For sums not exceeding 16 rupees.

433. What is the highest?—Two thousand rupees, for sums exceeding one lac of rupees.

434. For 100,000 rupees, what is the institution stamp?—One thousand; exceeding that sum, 2,000.

435. By what Regulation is that?—The amount of the institution stamps is fixed by the Bengal Regulation, No. I. of 1814.

436. You have been speaking entirely of the courts subject to the Presidency of Bengal?—Yes.

437. Are the fees of the vakeels of the same amount in the different courts, in the Zillah, in the Court of Appeal, and the Sudder Dewanny?—Yes, they are at the same rate.

438. So that the suitor upon each stage of his cause in the Zillah Court, the Court of Appeal, and the Sudder Dewanny Adawlut, has to pay the vakeels?—Yes.

439. Has he also to pay institution stamps upon each?—Yes.

440. As if it were a fresh cause?—Yes.

441. That is, the plaintiff?—The plaintiff or appellant.

442. Upon what document or proceeding is the stamp affixed?—It is upon the plaint or petition of appeal.

443. Will

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443. Will you be so good as to state the amount of the vakeels' fees in progression, from the smallest to the largest?—For suits not exceeding 5,000 rupees, five per cent. is allowed. If the amount exceed 5,000 rupees, and do not exceed 20,000, five per cent. is allowed on 5,000, and on the remainder two per cent. If the amount or value exceed 20,000 rupees, and does not exceed 50,000, then on 20,000 the fee is calculated as in a suit for that amount, and on the remainder one per cent. is allowed. If the amount exceed 50,000 rupees, and does not exceed 80,000, on 50,000 a sum is allowed, calculated as in a suit for that amount, and on the remainder one half per cent. is allowed. If the amount exceed 80,000 rupees, 1,000 rupees are allowed and no more, however great the amount or value. These fees are fixed by Regulation VII. of 1814. The fractions of rupees are in all cases rejected.

444. Will you enter into the same detail with respect to the institution stamps?—In suits for sums not exceeding 16 rupees, the plaint or petition must be written on paper bearing a stamp of one rupee. If the suit exceed 16 rupees, and do not exceed 32 rupees, a stamp of two rupees is required. Above 32 rupees, and not exceeding 64, the stamp is four rupees. Above 64 rupees, and not exceeding 150, eight rupees. Above 150 rupees, and not exceeding 300, 16 rupees. Above 300 rupees, and not exceeding 800, 32 rupees. Above 800 rupees, and not exceeding 1,600, 50 rupees. Above 1,600 rupees, and not exceeding 3,000, 100 rupees. Above 3,000 rupees, and not exceeding 5,000, 150 rupees. Above 5,000 rupees, and not exceeding 10,000, 250 rupees. Above 10,000 rupees, and not exceeding 15,000, 350 rupees. Above 15,000 rupees, and not exceeding 25,000, 500 rupees. Above 25,000 rupees, and not exceeding 50,000, 750 rupees. Above 50,000 rupees, and not exceeding 100,000, 1,000 rupees. Above 100,000 rupees, 2,000 rupees.

445. Will you state any other stamp duties to which the parties are subject, besides the institution stamp?—All exhibits filed in court are required to be accompanied with an application praying the admission of the same, and that application must be written on stamped paper; if in the Zillah Court, the stamp is one rupee; in the Provincial Court and the Sudder Dewanny Adawlut, two rupees. So also no summons is issued for the attendance of any witness without an application in writing, praying the attendance of such person, which application must be written on stamped paper, similar to that prescribed in the case of filing exhibits. Further answers, replications, rejoinders, supplemental pleadings, and all agreements of compromise and petitions, are required to be written on stamps of one rupee in the Zillah Court, and four rupees in the Provincial Court or in the Sudder Dewanny. Miscellaneous petitions and applications preferred to public authorities, either revenue or judicial, are required to be written on stamps of eight annas, if preferred to a Zillah judge, or magistrate, or collector; of one rupee, if to a Court of Appeal or Circuit; and of two rupees, if to the Sudder Dewanny or Nizamut Adawlut, or to the Board of Revenue. The appointment of the vakeels to act in each case is made by an instrument bearing a similar stamp. Copies of decrees also are required to be stamped: in the Zillah Court, the stamp is one rupee; in the Provincial Court, two rupees; in the Sudder, four rupees; and all proceedings of the Sudder prepared for transmission to the King in Council must be transcribed on paper

paper bearing a stamp of two rupees. Copies of miscellaneous papers are required to be written on paper bearing a stamp of eight annas, or half-rupee.

446. Is the expense of stamps a very considerable item in the costs of suits both to plaintiff and defendant?—Yes, I should imagine so, especially to the plaintiff, who pays the institution stamp.

447. How is the amount of the vakeel's fee fixed; is it upon the sum claimed by the plaint, or upon the sum recovered?—Upon the sum claimed.

448. Can the party in any case recover more than the amount which he claims?—I think the judgment includes the amount of interest that accrues pending the suit; but I am not sure.

449. At the institution of the suit, must he not make his full claim?—Yes, unless the case be such as to admit of successive actions.

450. Is it not frequently the case, that on the institution of a suit, a plaintiff, in order to determine the right, restricts his claim either to particular premises, or to a particular sum of money?—I do not recollect any case in which a suit was brought for a certain portion of the claim with the distinct view of settling the right; but according to my recollection, cases have frequently occurred in which the plaintiff has sued for only a part of his just demand in the first instance, intending to sue for the remainder separately if he succeeded.

451. Do you refer to cases with respect to land, or with respect to money demanded, or both?—The cases that I have in recollection had reference to money demands.

452. Then, by the law and practice of the courts in India, may a party sue for a part of his demand, and afterwards commence, having recovered that portion, a fresh suit for the remainder?—I think he may so restrict his claim in the case of a money demand, but not, I apprehend, in the case of landed property, unless the things be distinct, and the interest separate: thus, of several zemindaries held by his ancestor, a plaintiff may, I conceive, sue for one separately from the rest; but he cannot sue for a part of a zemindary.

453. May he sue for a detached part of a large estate for the purpose of establishing his right, and saving the institution fee in the first instance?—Not, I apprehend, if the estate stand in the books of the government as one held by the same title or subject to a common assessment. Thus if a zemindary or a talook, although the parts may be locally detached from each other, or consist of separate villages, a plaintiff claiming under a title applicable to the whole, cannot, I conceive, bring his action for any particular part or village.

454. If the plaintiff recover less than the amount which he claims by the suit, does he get back any part of the institution fee?—He gets back no part of the institution fee.

455. Does the vakeel, although he should recover less, receive the full amount upon the sum claimed?—Yes, upon the amount of the sum claimed.

456. Do those tables which you have produced exhibit an account of the whole of the expenses to which a suitor is subject in the courts in India, in the course of the suit?—No, I apprehend not; they include only the expenses authorized by regulation, and among those there is no allowance for a private agent of any description, although one is almost uniformly employed.

457. Is

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457. Is there not in every cause a mookhtar?—Yes, in most cases.

458. What is the mookhtar?—He is sometimes a servant of the family; some of them are hangers-on of the court.

459. Is the mookhtar or the agent different from the vakeel?—Quite different

460. Does he not give instructions to the vakeel?—He usually instructs the vakeel as to all facts to be proved or allegations made; he has the charge of the documents on which his client may rest his case, and takes the general management of the cause.

461. Are there, besides the mookhtar or agent, other expenses to which he is subject?—I am not aware of any that are necessary or that could be recognized; but I am afraid that there are charges of which we can take no cognizance, and of which it is difficult to know the amount.

462. Will you state what those charges are which you suppose to exist?—I allude to sums corruptly taken by the native officers, as stated in my former examination; and I have no doubt that the mookhtars often fraudulently charge what they do not expend.

463. Is there any officer or person in the court who taxes the costs of the different parties?—It is the duty of the sheristadar to see that they are according to regulation.

464. In addition to seeing that the costs are according to regulation, is it his business to see that they have been paid?—It is his business to see that the proper stamp is used, in so far as the law expenses are charged in the form of a stamp duty; also, that the amount of the vakeel's fees has been deposited, and its receipt acknowledged by the treasurer.

465. Is it his business to see that the expenses charged for peons and ameens, and for the maintenance of witnesses, have been paid by the parties?—The peons are generally, I believe, paid through the nazir, the officer who superintends the execution of all processes of court.

466. Does the sheristadar ascertain, in fact, that the expenditure has been made, and that it is according to regulation?—Yes; such I conceive to be his duty.

467. How is the value of land sued for estimated in order to fix the institution fee?—In the case of land paying revenue to government, the value is taken at three times the amount of the government jumma or assessment, if it be in the provinces of Bengal, Behar, Benares, or that part of Orissa which is under the permanent settlement; if the land lie in the Ceded and Conquered Provinces, or in Cuttack, which are liable to variable assessments, the value is taken at the amount of one year's assessment; in suits for land held exempt from payment of revenue to government, the value is assumed at 18 years of computed annual rental; in other cases at the estimated worth of the thing sued for.

468. Do the duties of the vakeel include the duties both of counsel and attorney in this country?—He is expected to do all such acts as may be requisite in the court relatively to the suit until judgment be enforced; but the greater part of an attorney's duty is generally done by the mookhtar or private agent of the party, or by the party himself.

469. Does

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469. Does the vakeel receive his instructions either from the party or from his mookhtar?—Yes.

470. Is there any official person employed to instruct him, similar to a solicitor in this country?—No such class is recognized; and though there are many who are in fact professional mookhtars in the courts, they are not legally entitled to interfere in the suits, nor is any part of their charges included in the costs adjudged to the successful party.

471. Does the vakeel in general communicate with the parties directly, or does he in general communicate through a mookhtar or agent?—In most cases, I imagine, through a mookhtar.

472. The mookhtar, or agent, is not recognized in the court as having any authority in the suit?—No; he is not allowed to appear; the party must appear, either in person or by one of the constituted vakeels of the court.

THOMAS FORTESCUE, Esq. called in and examined.

T. Fortescue, Esq.

473. WERE you in the civil service of the Company for a number of years?—Yes, I was, for about 23 altogether.

474. Under what presidency were you employed?—In Bengal.

475. Will you state what situations you held generally; in what departments have you been employed?—Both in the revenue and the judicial.

476. How long in the revenue?—For a period of eight or nine years or more, in charge of five different collectorships, three in the Lower Provinces, and two in the Upper Provinces; secretary to three separate revenue commissions, one for the Ceded Provinces, one for the province of Cuttack, and one for the Ceded and Conquered Provinces. In the judicial department, judge and magistrate of the city of Patna, judge and magistrate of the district of Allahabad, subsequently officiating judge of the court of circuit and appeal for the division of Benares; then secretary to government in the territorial department; and lastly, civil commissioner for Delhi.

477. Will you state what, from your knowledge and experience, you consider to be the respective rights of the zemindars and the ryots, in respect to the land which they possessed under the Bengal Presidency?—It is a subject which very early interested me, and I endeavoured to acquire an insight into their respective character and relation. My belief is, founded upon the best inquiry I could make, that the ryots have certain qualified rights in the land which they cultivate; that those rights have been acknowledged by the Mahomedan government, both as to law and past practice; and that though the word ryot is a term of different significations, yet it does, with respect to a certain description under that denomination, give a determinate right.

478. Will you state what you consider to be the qualifications to which that right is subject?—The right is an hereditary right to raise the produce of the soil receiving of that produce a certain admitted portion, the remainder of which belong to the government. This opinion goes back to and is founded upon the Mahomedan law, as brought, at the period of the conquest, into Hindostan. India having been conquered by force of arms, the Mahomedans applied their law of conquest to it, which authorizes them to deal with the conquered country in different ways. For instance,

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instance, they can make the inhabitants slaves, and carry them off; they may replace them by others; or they may leave the inhabitants on the land, and impose upon them a certain tax, denominated kheraj, or revenue. There are other modes also by which the conquerors may proceed: they may divide the country among themselves, and impose a certain demand upon those who share, which is known by another name, and amounts only to a tithe. In the instance of the law of conquest, as applied to India, it is the same as that followed in Syria and Egypt; namely, that the original inhabitants were allowed to remain on the soil, and rendered subject to the tax particularly called kheraj, which thus transferred the property absolutely from the conquerors to the conquered inhabitants. The terms made use of in the Mahomedan law, both with reference to the inhabitants and to the property in the cultivator, are terms of the most positive and definite meaning. The inhabitants are called by the term "Uhul," which means those resident upon the lands; the cultivators are styled "Rub ool uruz," or masters or owners of the soil; and the term property is denominated "Milik," importing the most indefeasible right, and they have the power of disposing of it in any way they choose. The Mahomedan lawyers, in discussing the rights over the conquered land, in no instance mention any other claims to it than those of the cultivator and the emaun, or sovereign of the country; but in speaking of the rights of the cultivators, they define the proportion of the produce that is his, and that which is the emaun's, or governor's, by saying, that the cultivator has a right to so much as shall secure him and his family a comfortable subsistence till the approaching harvest, together with seed for the next crop; beyond that the remainder becomes the government's. There is a person to be appointed on the part of the governor, who is to be careful to collect from the cultivators according to the above data, and who is to be paid from the public treasury; nay, further, certain enumerated descriptions of produce are said how to be taxed.

479. Do you consider that at the time of the Mogul government in India, there was any intermediate class between the government and the ryot?—Certainly; but that class was not a proprietary class, generally speaking; exceptions of course there were; that class consisted of persons who were in possession of the privilege of arranging for the realization of the revenue from these cultivators, and forwarding it to the public treasury. In many instances they got grants or immunities from the ruling power in consequence of their influence, or the utility or the necessity of their official station, or from various other causes; but they did not become proprietors over the cultivators, with power to turn them out, nor did they attain to rights over those in their holdings or zemindaries, beyond that of taking from them the government share of the produce.

480. Was there any regular proportion of the produce to which they were entitled?—The proportion of the produce was to be regulated as I have just described.

481. Was there any fixed proportion of the produce which you could say the ryots were subject to pay to government?—I should say that the demand upon the ryot was always grounded upon this: that it was never to exceed that which should leave a sufficient competency for him and his family to subsist upon, and enough to enable him to cultivate.

482. Do

482. Do you conceive that there was in practice any class similar to that which composes the class of zemindars in India now?—In practice, as we have given interpretation to the word zemindar, certainly not; and we find that the further we travel from the lower and older provinces up to the newer, the right of the ryot becomes more and more definite and tangible.

483. Have not the zemindars of Bengal for a long time assumed to themselves the rights of proprietors?—Yes; after the promulgations at the period of the permanent settlement.

484. Do the zemindars, in practice, upon the expiration of a lease, raise the rent upon the ryots, according to what they consider the value of the land to be?—They do, most frequently.

485. How long has that been the course of practice for the zemindar to act as the proprietor of the land in Bengal?—Since the permanent settlement, his power has been allowed to be nearly absolute; that is to say, applications made by the ryots have proved most generally fruitless, for the establishment of their qualified rights; the courts have not had the means of settling the rights of the ryots, or coming to a knowledge of them.

486. What do you mean by saying that the courts have not had the means?—They have not been guided by the regulations to a knowledge or sufficient estimate of the qualified rights of the ryots, as I have stated; for a ryot is not a tenant at will, nor is he a tenant for life, nor by lease, nor by any naturally expiring term by time, nor liable to be ousted by a higher bidder, as in this country; therefore such meaning or sense cannot be described by the use of the term ryot, whose holding is superior to these; though, at the same time, he is not an absolute proprietor, for he has not the entire right to what he gets. He has a right to the soil, to raise the produce of it, and to a proportion thereof, before the government's share or remainder.

487. Is his right hereditary?—His right is hereditary.

488. Then, according to the former law of Hindostan, he could not be dispossessed?—According to the Mahomedan law, he could not be dispossessed. His possession was fixed, and his interests or rights, with those of the government, secured by law.

489. Is not the Mahomedan law very much modified in the regulations?—Not in that respect; it has never been touched.

490. Do you consider that at this moment, under the regulations, the zemindar has no right to dispossess the ryot at the expiration of his lease, and to take another ryot as his tenant?—The term lease, as used in this country, in respect to the relation between a proprietor and the inferior, does not apply in India, because the ryot is a proprietor; he objects to take a lease from one that would assume that character over him.

491. Does he take a lease?—He is often now compelled to do so for his own advantage under the regulations; his rights are overlooked.

492. So that he is, according to the law and practice as obtaining in India under the regulations, compelled to take a lease in order to insure his possession of the land?—He is not absolutely obliged to take a lease, but it is strongly encouraged,

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and it is his interest under the regulations that he should do so: there has been much change in the regulations on this point.

493. Do you consider that by the law as it now obtains in India, the zemindar has a right to raise the rent upon his tenant, and if the tenant will not pay the demand, to dispossess him?—I think by the spirit and intent of the regulations, he has not; and certainly by the Mahomedan law he has not, if the rent he raise trench upon or go beyond the data I have given.

494. By the Mahomedan law, could the government exact a greater quantity of the produce in proportion to the improvement of the land, provided he left sufficient for the maintenance of the cultivator and his family?—Yes, the government could; none but the government and the cultivator have a demand upon the soil.

495. Is the payment of rent in proportion to the produce, under the presidency of Bengal?—It is very much lost sight of; the government interfere little or nothing between the cultivator and the zemindar.

496. Do you consider the zemindar to have been originally the mere collector of the revenue of government?—Originally a person appointed to arrange and collect the revenue from the cultivators; his own profits were indirectly derived from various sources. The term zemindar has often been, and is still, applied to a person neither considered to be nor claiming the whole proprietary right in his zemindary.

497. Had he no per-centage?—It does not appear that there was an exact per-centage, but there was an allowance which was tantamount thereto, called "nankar;" "nan" meaning literally bread, or an allowance for subsistence. The persons denominated zemindars, did, many of them, possess property in a village, and whole villages too.

498. In point of fact, did he originally derive a certain profit from his situation as zemindar, out of the produce of the land?—Yes; but distinct from and without infringing the property right in the soil and its produce, as I have described, belonging to the ryots.

499. You consider, that under the Mahomedan law, the zemindar has no proprietary right in the land?—Generally speaking, it is so; in many instances he is a part proprietor with the rest of the cultivators, and has a village or villages cultivated by his own family or hired persons.

500. He is a participator in the produce of the land?—Yes, as I have just described.

501. You mean by the Mahomedan law, not in practice?—There is this distinction in the zemindaries; that in Bengal the zemindar is now held to be a large proprietor of estates, whereas in other parts of the country he is but a small real sharer or proprietor in them. The name is often made use of by and to a person dealing directly or indirectly with the government for his holding; and being the proprietor of it really, or not the proprietor, it is indiscriminately applied, without any consideration of locality, or correct notion of right.

502. Do you consider that the zemindar has not a right to raise the rent of the ryot?—He has a right to regulate his receipts from the ryots, according to the rates prevalent in the pergunnah and neighbourhood; beyond those rates he has not; nor beyond what shall leave him a secure subsistence.

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503. Do you consider that the law under the Mahomedan government is now modified by the regulations?—I think what I have stated was and is the Mahomedan law, and should be the just practice under the regulations. The persons termed ryots object to take leases from those placed over them by the term zemindar, because that implies a proprietor above them, whereas they consider themselves the proprietors, and it would be lowering themselves to do so; not that they dispute the right of the government to take the proportions due from them, but that they deny the right of any individual between them and the government as affecting their inherent prescriptive right of remaining upon and raising the produce of the property they cultivate. The Mahomedan law gives them liberty to dispose of that property as they choose; at all times, however, that property is subject to the demands of the government.

504. But of all that is not subject to the demands of the government they consider themselves the proprietors?—The Mahomedan law establishes their right first; it proceeds upon that principle. The instructions to their agents are to regulate their settlement with the cultivators, so as to leave them what I have described, and to bring the remainder to the public treasury; that is the Mahomedan law, and it never has been touched. I consider that the regulations have, in spirit and intent, always reserved the rights of the ryots, though they never defined them; but upon the data I have mentioned, they might build what would make the cultivators a contented and happy people, which is not now at all the case.

505. You do not conceive that there is any exact definition of the rights of the ryots by any regulation?—Certainly not; I believe also, that if the pergunnah rates for regulating the demand of the government from the ryots had, at the period of the permanent settlement, been recorded and fixed, the property of the ryots in the soil ere this would have been very valuable, and have rendered them most comfortable; such rates were recorded in some instances, and have been appealed to.

506. You think it is a defect in the permanent settlement that they did not fix and ascertain the exact rights of the ryots?—Certainly.

507. In point of practice now throughout Bengal, does not the zemindar, when he thinks that he can obtain a higher rent for his land, dispossess the ryot, and let it to a person who will give him a higher rent?—He cannot do so avowedly by aid of the regulations; but practically he can, though it is not intended that he should; the ryot is impotent, and cannot secure himself in the enjoyment of the qualified right I have endeavoured to describe.

508. Can he not maintain his right in the Zillah Court to keep possession of his land upon the terms that you have mentioned?—If the terms that I have mentioned were by the regulations acknowledged as a principle or basis which the courts might assume, he could establish his right; but there is no such data or ground given to aid or direct them; they have no points or precedents as it were set before them.

509. Do you think that there is no regulation sufficiently explicit to enable a judge to decide any case where there is a contest between the zemindar and the ryot, in favour of the ryot who chooses to maintain his possession without agreeing to an increase of rent upon the part of the zemindar?—I do not think that the regulations

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regulations generally are sufficiently clear to enable him to establish that point; some particular cases are provided for.

510. You say that the zemindar has no power by the regulations to increase his claim upon the ryot, but that he does it practically; how does he manage to do it?—The regulations have never intended that any rights which the ryots possessed should be violated; they have constantly and generally expressed that; but they have never distinctly specified what those rights are that they wished should be upheld in the person of the ryot, nor have they, in consequence of the want of that definition, given the court sufficient means of determining disputes of that kind between the two parties.

511. In point of fact, do you mean that those regulations have not been enforced in the way that they were meant to be enforced?—Yes, with respect to the ryots.

512. And that, in point of fact, the zemindar treats the ryots as a proprietor does his tenants in this country?—Yes, very nearly so.

513. Has there been any case brought into the courts in which a ryot has attempted to establish his claim?—Many; I have not myself had to do with any, but I know, from conversing with judicial officers on that point, that they have felt the impracticability of protecting the ryot, from want of any sufficient data by which to regulate their decisions.

514. In those cases where you state the zemindars come before the court, supposing the ryot to be able to establish his right, as derived from the Mogul government, and to show that the spirit of the regulations was, that that right should be preserved, would not that court listen to that right, and be likely to support it?—I think the courts would, and should be bound to uphold it.

515. Then the difference is, whether they have that right or not?—My opinion is, that the unaltered Mahomedan law gives them that right, and that if the government and the courts had gone back to look for principles to regulate their conduct, they would have found that there were only two persons, the government and the ryot; that the ryot had a certain proportion of the produce, and that the remainder was the government's. There has, in my opinion, arisen a great deal of difficulty and injustice from not following that course.

516. Supposing that it is acknowledged that there are only two classes, the government and the ryot, is it not possible that the government might transfer any portion of that right to other persons?—Certainly; but no more than its own remaining right. The Mahomedan law of conquest, and immediate practice, has already declared and settled the cultivator's rights.

517. But the zemindars, you say, exercise a greater right than the government possess?—The zemindars endeavour to become what the ryots ought to be considered as.

518. Do they act thus independently of any grant from the government?—The regulations declare them to be the zemindars or proprietors of the soil, reserving however, in the most explicit manner, the rights of all classes of cultivators.

519. By what regulations is that declared?—By the regulations of Lord Cornwallis in 1793, and also by the minutes of his Lordship recorded anterior to that.

520. Was

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520. Was it a total departure, when he made those regulations, from the system which had been previously adopted?—When he formed the regulations, the government was satisfied that there were rights in the ryots, but what they were they knew not precisely. If they had adverted to the Mahomedan law of conquest, and its application to India, they would have found, in my judgment, a basis upon which to build.

521. Do not you consider that those regulations of Lord Cornwallis were settled, after considerable deliberation and inquiry, by persons who had knowledge upon those subjects?—Certainly, very great; but at this moment there are as many, and perhaps more, who upon research are disposed to favour the rights of the ryots, and to consider that the zemindars have none such as the regulations now give them.

522. Is it not a point upon which there is a very great division of opinion in India, the respective rights of the zemindar and the ryot?—Yes; but not so great as formerly, I believe.

523. Among persons well informed upon the subject?—Quite so.

524. You say that the spirit of the regulations has not been acted up to in that respect?—I think so.

525. You say that the spirit of the regulations has not been acted up to, therefore you suppose the spirit of those regulations to have been of that description as to acknowledge the right to be solely and simply in the ryot; but does that appear to be the case?—No.

526. Therefore the spirit of the regulations is not such as you have described?—What I mean is, that the intention of those who made the regulations, and of the regulations, was, when they constituted the zemindars such as they did, that the ryot's rights, undefined as they were, though evidently believed to exist, should be upheld; and that by the Mahomedan law and practice the ryot was entitled to possession, and such portion of the produce as would make him comfortable and easy, and secure the cultivation of the land, which is a right superior to most tenures. The spirit of the regulations does not go so far as the question implies; for if so, it is presumable they would have done more than guard by declaration that (the ryot's rights) of which they possessed not the requisite knowledge to describe minutely.

527. Supposing he neglected to cultivate the soil, what course would government take?—That is provided for by the Mahomedan law, which says with regard to it, that if a man does not cultivate, the governor or some person on his part shall, if he is unable to cultivate, advance him the means of so doing. If he neglects to cultivate, or abandons the soil, still the government have a demand upon him; and why? because he had the power of giving or lending it or hiring the land to whom he chose; and being therefore the proprietor, he is still liable to the claim of the governor.

528. Do you consider that the hereditary right of the ryot has been rejected, or in fact altogether done away by the regulations passed by Lord Cornwallis in 1793?—I think by the practical operation of the regulations they have been nearly effaced, except in some special cases provided for. Travelling to the Upper Provinces from the Lower, those rights are found to be much more respected and clear,

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clear, particularly so in Bundlekhund and Delhi; in short, where the government have least interfered, there the rights of the ryots are more marked in the soil.

529. You do not consider that by those regulations of Lord Cornwallis the hereditary right of the ryots has been all extinguished?—No; there are particular instances in which that has been the case.

530. Are there particular parts of India in which that hereditary right is acknowledged more than in others?—Very greatly: passing from Bengal upwards into the Ceded and Conquered Provinces and Delhi, it is more distinctly marked.

531. Do you think that the judges in those provinces would decide in favour of the hereditary right of the ryot, if it came in question?—Distinctly so in many parts; I would not say in all.

532. And in the lower parts of Bengal the rights of the ryot have been put a stop to?—Almost, with certain exceptions.

533. And the zemindar possesses the same power with reference to his estate, that the proprietor in this country does?—Yes; very nearly so practically.

Jovis, 9° die Aprilis, 1832.

The Right Hon. ROBERT GRANT in the Chair.

JAMES O. OLDHAM, Esq. called in and examined.

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534. WILL you state in what capacity you have served in India?—I was Collector of land revenue in the Ceded and Conquered Provinces; and after that, Zillah Judge of Moradabad; and last of all, Judge of Circuit at Bareilly.

535. When did you go to India?—In 1798 I went, and in 1823 I left it.

536. Were you employed in the administration of the police?—I had the charge of the zillah of Moradabad; the police of zillah was entirely under me and my assistant for seven years.

537. Have you turned your attention to the question how far it would be possible and expedient to employ natives more extensively than at present in the administration of justice in India, and if so, be pleased to state the result of your consideration upon that subject?—I do not think that the employment of natives to a greater extent would be attended with any beneficial result in the police. I think the further the native police officer is from the European superintendent the more likely he is to abuse his office. That perhaps some of the situations are not sufficiently well paid. I think that many of the police situations are not paid agreeably to the responsibility. If you put men, whether Europeans or natives, in situations of great responsibility, the pay should in some measure correspond. I think that the jurisdictions are, generally speaking, too extensive for one European; that they should be subdivided; and young men, as soon as ever they go out almost, who, under other circumstances, would be hunting and shooting, and idling their time, if employed, and feeling a responsibility, would become valuable servants

servants within a year or two after they went out. I think that the whole of those who are now detained in Calcutta doing nothing should be sent up to the different zillahs, and immediately employed under the collectors or judges, where they would gain a knowledge of the languages, and of the customs and habits of the people by intercourse with them. Prior to their being nominated to any situations of trust, where they had any great responsibility in themselves, they might be examined as to their knowledge of the languages, &c. But they might be very useful long before that, when they are employed under an active watchful magistrate or collector, who will know exactly how far to avail himself of their qualifications for the public service. And I would not have the judge or collector bound by any law to employ them in any particular manner, but leave it to his discretion, agreeably to the ability and the assiduity which he may discover in them.

538. Having said that some of the situations in the police are not sufficiently well paid, do you mean that they are not sufficiently well paid to induce the more respectable class of natives to become candidates for such offices?—I do; or at least if they become candidates, it is with an intention of peculating.

539. Should you make the same remark as to the employment of natives in judicial situations?—Yes, I should certainly, but particularly the Mahomedan law officers, who sit with the judges of circuit in court, and give their decision whether the fact is proved or not, as a jury do in England. Those officers have 200 rupees a month, and when on circuit, are probably obliged to spend 150 of it; and should they lose their situations they may starve, for there is no such thing as a pension for them to retire upon. Now, those men might be pensioned without any material sacrifice by the government, after a fixed period of service, because of their age, being usually upwards of 50 years of age before they get those situations, and they are not a long-lived race.

540. Do you mean to say generally that the judicial situations occupied by natives at present are not sufficiently remunerated?—Yes, I do. I have pointed out the law officers of the courts of circuit, and I may add to them those of the zillah courts.

541. Can you give some general idea of the scales of emolument; are they not matters of regulation?—No, I think they vary, and are fixed by government, on special representations. I dare say I am not inaccurate in stating that the law officers of the courts of circuit have 200 rupees a month; that the law officers of the zillah courts have 80 and 100: but then, again, the law officers of the zillah courts have a stated allowance upon their decisions; they decide causes to a certain extent.

542. By the law officers, you mean the Hindoo pundit, and the Mahomedan cauzee or moolavie?—Yes.

543. Are their salaries pretty much upon the same scale?—The law officers in the court of circuit are all Mahomedans, there are no Hindoos. There is a pundit belonging to the court, who merely answers questions as to law in the court of appeal. The same judges sit in both courts; no pundit accompanies the circuit, therefore when an opinion on Hindoo law might be required, reference would be made by post to the sudder station, or the opinion of the zillah pundit taken.

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544. In the court of appeal, which is composed of the same judges as the court of circuit, is there not for the trial of appeals in civil cases a Hindoo pundit attending on the judges?—Yes, in civil cases, but he has not a seat in court the same as the Mussulman law officer has, but he is in an apartment in the same building, and questions on Hindoo law are sent to him in writing, and his answer forms part of the record of the civil case.

545. Then the Committee are to understand that the Hindoo law officer forms no part of the attendants on the court of circuit?—No, certainly not; he remains at the sudder station, while the judges make the circuit. But any question on Hindoo law that requires an answer is referred to him, or the zillah pundit. The criminal law is Mahomedan.

546. The civil cases are not tried on appeal upon the circuit at all?—Oh no; the circuit is for the gaol delivery.

547. Will you state more fully your ideas as to the mode of training young writers in India to be employed in judicial situations?—I would, in the first place, insist upon their being with the judge of the zillah in court during the hours that he sits daily, for at least, we will say, the first twelve months, or with the collector, it would be just the same thing if the collector is making a settlement, by which he will get more practical information in twelve months than he would in ten years at a college in Calcutta, or any where else. By a settlement, I mean assessing the revenue of government on the land, which yet remains to be done in the Ceded and Conquered Provinces. I consider that the collectors so employed have a most laborious duty; that young men, if sent immediately up to them, instead of being kept at the College, might very soon be made useful, and certainly, as I have said before, would learn more in twelve months than they would in ten years elsewhere.

548. But with respect to the other provinces, what would you say?—I think the plan would succeed in every province of the British Empire.

549. It is understood that the education at the colleges in India is confined to the instruction of the native language?—Yes. Such was the case in 1801.

550. Do you think that there would be any use in having a system by which some of the general principles of law should be communicated to the young men who are to practise judicially?—Our courts are more courts of equity than law, and the less of law the better, I should think, generally speaking. I think if a man has the opportunity of gaining a general knowledge, it might be certainly of great benefit to him to attend public courts any where, either in this country or Calcutta, or any where else; and am of opinion, with regard to the native community, that the less of law and the more of equity they have the better.

551. What age would you have them go out, generally speaking?—I think about 18, not before.

552. And should you conceive that their education, previously to their going out, should be of a general nature?—Yes.

553. Not directed to any particular department which it was supposed they might pursue in India?—They have opportunities of hearing, I believe, lectures on jurisprudence, of attending and getting information on every subject at the College in England.

554. From

554. From your observation, should you say that the young men employed in judicial situations are competently instructed?—I answer to that (it is a general question), I have met with many young men that I should say were extremely well qualified; there may be exceptions.

555. You do not think there is any such deficiency as requires particularly to be provided for?—No, I certainly do not; and particularly the young men who go out in the present day; perhaps many years back there was some lamentable deficiency.

556. Do you think the College at Haileybury has answered a good purpose in that respect?—Oh, certainly, as far as regards general knowledge.

557. Do you not think that a young man having received a liberal education, and among other things, having been versed in the general principles of jurisprudence, would be more fit to enter upon a judicial function in India, than a person who had not the advantage of that education?—I certainly must admit that, inasmuch as all knowledge enlarges the mind.

558. But in general, perhaps, you think that the time which would be devoted to this sort of previous education might be better employed in obtaining a practical acquaintance with the manners and customs of the natives?—Yes.

559. But could he not obtain that after having gone through a certain degree of study of the principles of jurisprudence in this country?—There is nothing to prevent that, certainly.

560. Do you think that by those means his entering upon service would be protracted to any inconvenient period with respect to acquiring the language by his remaining in this country for the purpose that has been mentioned?—Perhaps not, supposing him to go out at 19 or 20, instead of 18.

561. Or 21?—No; we are getting on too much then; 19 or 20 perhaps.

562. You would not recommend any young man going out to India for the civil service, either judicial or revenue, to go out at a later age than 20?—I think not; from 18 to 20, I should say.

563. You say that on the ground, that past that time the language is not so easily acquired?—Yes; and that before that time their minds cannot have been sufficiently cultivated.

564. Do you think that the language is better acquired before or after 20, generally speaking?—Oh, decidedly before.

565. Should you say that from experience?—Yes, certainly. I have in my eye now several young men who came out very young, and who made such proficiency, that those who were a few years older felt a good deal ashamed and annoyed at being classed with them, although these were men perhaps of better sense and judgment than these lads, but had not the quality of attaining the language.

566. In speaking of the employment of natives in the courts of justice, do you think that it would be possible to employ them to judge alone, or must it be under the supervision and with the assistance of Europeans?—We dare not trust them alone.

567. Do you think that by giving the suitor an appeal from the judgment of the native judge, the native judge might not be trusted?—He is already trusted in a measure now, I think to the extent of 100 rupees. An appeal lies from the decision of

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of the moonsif to the judge, and the judge either decides it himself, or again refers it to his registrar or to the sudder aumeens.

568. The sudder aumeen is a superior officer to the moonsif, is he not?—Yes; the sudder aumeen remains at the principal station; it is a situation that the moonsifs look up to. The aumeen has a better salary, and tries original suits to a greater amount than the moonsif, upon which he has a per-centage.

569. In practice, did you find there were many appeals from decisions of native judges in these cases of small amount?—I think the decisions of here and there one or two of the moonsifs were uncommonly good; of those whom I had to look after.

570. Those that were appealed?—Yes. Although the judge usually makes them over to the sudder aumeen or to his registrar, yet he should occasionally take up a few from each to see in what manner they get through their business. Considering them as well educated for natives, they are sure to know almost on which side right and wrong lays, being on or near the spot where the cause of the action arises, and knowing the customs: if honest, they would be almost invaluable.

571. If they could be trusted they would make the very best judges, would they not?—I think undoubtedly they would, because they are not wanting in ability; but then the acutest are in general the most corrupt.

572. Do you think there is no hope, by establishing better pay, of trusting them more than at present, by giving them a sense of responsibility, and possibly by courting something more of the public opinion of the country than there is at present, that they should be improved for the purpose of the administration of justice?—Yes, I do think that selections might be made from among them, I would say from amongst the Mahomedans.

573. Why do you draw a distinction in favour of the Mahomedans?—I can only speak from my own observation of those who have been under me, and I have found them more trust-worthy than the Hindoos.

574. With this opinion, do you think it possible that the native Mussulmen might be more employed in the administration of the criminal law of India?—I think a selection might be made here and there, which would have a very happy effect; in which case, the individual selected should be entitled to a pension after a fixed term of years of approved service. This provision for old age might be the means of ensuring honesty in the conduct of many whose principles might otherwise not have been proof against temptation.

575. Do you conceive that the employment of natives in judicial stations, either civil or criminal, would attract the confidence of the natives themselves, if they were not liable to the supervision of Europeans?—No; I do not think a native could trust a native; I should say, certainly, generally speaking, that they would prefer an European jurisdiction.

576. Should you say generally, that among the natives there is a want of regard to character?—Oh, most decidedly.

577. Is there any hope that that will be remedied, or in what way is that to be hoped?—The state of feeling among the natives affords little hope of so desirable a change.

578. There

578. There has been an idea started, that an increased employment of the natives, and showing them more confidence, would have the effect of reducing the qualities for which credit is given to them?—In a certain degree I should think it might have a beneficial effect. Although they might receive a higher pay, and be put into situations of greater trust, yet I would not remove them far from European superintendence.

579. Do you think it would be safe or politic to employ the natives as justices of the peace in India?—By no means.

580. From what cause do you think it would be unsafe or impolitic?—That they would abuse the trust, and make it a source of emolument to themselves, and that in such a manner that it could not be easy to detect them, for they would not absolutely seize on a man's person, but they would let that man know that he may be called before the police unless such sums were paid, and let him know it in such a way that it could not be traced out; and the very circumstance of a native of any rank being called before the police is a disgrace; it is considered so among themselves. But what I am saying now refers entirely to the Ceded and Conquered Provinces; it may not be the case to that extent about Calcutta or in Bengal generally. But the last 17 years that I was in India I was in the Ceded and Conquered Provinces, and am speaking only of those provinces.

581. Do you mean that your answers generally have reference to those provinces?—I should say all, except to such questions as have been put to me regarding European writers and so on. I give no opinion as to Bengal, Behar, or even Benares.

582. Should you suppose if Europeans were to enter the country in greater numbers, either as residents or settlers, that means could be found for any system of justice adapted to that state of things?—The present jurisdictions there must be reduced greatly; jurisdictions might be made of perhaps one-fourth of the present extent if there were European settlers.

583. The extent of country you mean?—Yes, the extent of country, supposing the zillahs now to be of as great extent as they formerly were, having myself had charge of zillahs of 140 miles and upwards in length.

584. Would that change involve the increase of the number of European judges of all kinds, or European justices of peace?—Why, yes, I think it must, for a young man of three or four and twenty could scarcely be trusted, I think, in such a jurisdiction where Europeans would have to come before him.

585. Do you think that in any case Europeans could be safely made subject to the jurisdiction of a native judge?—I should be very sorry to see it; I do not think that a native judge, generally speaking, would have firmness sufficient to act in that capacity where Europeans were concerned; and if he had, then on the other side of the question, I think it would have a bad effect.

586. In what way?—It would serve to depreciate the character of the Europeans in the estimation of the natives. I am now talking of the Ceded and Conquered Provinces. There are no Europeans there but the Company's civil and military officers, except perhaps here and there half-a-dozen camp followers, who are treated as suttlers of the camp.

587. Are

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587. Are there no indigo planters there?—There was not one in either of the districts I had charge of; there was not an European indigo planter in them all. I believe that there might have been one or two after I left.

588. Does your objection to the employment of native judges apply to the police as well as to the civil and criminal law?—Certainly, to both branches.

589. Then, in point of fact, the administration of justice would be much more expensive in case of the introduction of European settlers and increased numbers?—Undoubtedly; to say double would be short of the consequent increase.

590. Do you think there must be a very great change in the state of feeling of the natives and of the Europeans, before the native agency can be employed as judges where Europeans are suitors, or where they are the persons tried?—Certainly, that is what I think.

591. Do you think that natives, in civil cases between natives, might be employed to a very considerable extent in point of amount, liable to the supervision of a European judge?—Perhaps the amount might be increased, that is, the sudder aumeen might decide to a greater amount, and I say that, because they are immediately under the personal observation of the judge himself, and if there was any great rascality going forward in the way of bribery, it must come to the knowledge of the judge through some of the people about, before it went to any great extent. Now, those who are employed at a great distance I should be loth to trust.

592. Then, generally, you think that even the presence of the European judge, or at least his vicinity, is of some importance?—No doubt, if he is a man who does his duty well, as I hope I may say the greater part of those with whom I was acquainted did; yet there may be exceptions.

593. Do you think very low natives could be employed to discharge properly the function of juries in either civil or criminal matters?—I have answered that question already in my letter to Mr. Villiers of the 28th of October 1831, and I beg to give that as my answer: "With regard to the employment of native juries, punchayets and assessors in civil or criminal trials, I am most decidedly of opinion, that the measure would be attended with great evil; the influence and authority of the zemindar is such, that individuals could not be met with sufficiently independent to give a just decision, when that decision should be at variance with the zemindar's interest. This I mean generally. The inhabitants of cities and large towns would form exceptions, but even from them I should not expect impartiality."

594. Do you think that for the purpose of forming a jury on circuit, the neighbouring towns could supply a sufficient number of persons to be jurors?—I think that men of sufficient ability may be found who, if not at all acquainted with the parties at issue, might give a just verdict; but corruption is so widely extended amongst them that the prisoners or their friends would, by some means, influence the jurors. Being therefore not independent men, their decisions could not be relied on.

595. When you speak of the influence and authority of the zemindar, will you explain to the Committee why that should prevail in all the ordinary cases that might be supposed to occur between individuals with respect to their private affairs,

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or in criminal matters?—I would say, in nine instances out of ten of the cases that occur out in the villages, the zemindar has an interest one way or the other. Of the zemindar's authority and influence I will give you one instance, in a case that occurred to me. A murder had taken place in the district of Moradabad, about forty miles from Moradabad. The thannadar, as is usual in those cases, proceeded to the spot to make an inquest on the body, and to inquire for witnesses of the fact: he took the evidence of one witness, who deposed he was present at the time the murder was committed, relating circumstantially the number of sword wounds given, the distance he stood from the deceased, &c. I mean merely to state that the most minute particulars were given by this man as an eye-witness; the man was summoned before me as a magistrate, for his evidence to be taken again. The man's name, as usual, was asked; he gave his name correctly. His father's name was asked; he gave that correctly. He went through the whole circumstances *verbatim*, as reported before the thannadar; but when I began to ask him a little more, and cross-questioned him a little, he lost himself quite, and seeing that I suspected there was something that there should not be, and followed it up, the man having no answer to give, at last said, "The whole of the evidence I have given is by order of the zemindar. I am not the real witness, but am come to personate him by the zemindar's orders." "Well," I said, "don't you know you are liable to seven years' transportation for a thing of this kind? here you are taking a man's life away by swearing this." To which he said, "What can I do? the zemindar told me to do it." Now, when matters are in that state, would you have a jury of such men?

596. Would that be at all a just sample of the feelings of men of that class?—I have no doubt but what there are numerous other instances of it; and I have no doubt that a large proportion of those men acting or immediately near their zemindar, and depending upon him for their food, &c. would in that manner personate any body else at the instigation of the zemindar.

597. Do you think the authority of the zemindar capable of suborning persons to act in that manner?—I do not much doubt that, whenever their interest is materially concerned. I think at that time Mr. Ross was the circuit judge, and when he came round (I was then magistrate), he sentenced the man to six or seven years' imprisonment for it.

598. The man who had sworn?—Yes.

599. In the criminal courts, the moolavie, or Mahomedan law officer, hears all the evidence, does he not?—Yes, he does in the court of circuit.

600. And does he find the fact?—Yes, he does; he says "guilty," or "not guilty."

601. Does that finding or verdict of the Mahomedan law officer include both law and fact?—The futwah of the law officer declares whether or not the fact is proved, and states what the Mahomedan law may be; but the judge decrees the punishment according to the regulations of government, substituting imprisonment and stripes with the corah, for the sanguinary awards of amputating limbs, &c.

602. Upon a charge of murder, does the moolavie find the verdict of "guilty," or does he find specially the fact?—No; "guilty," or "not guilty." As soon as ever the whole of the evidence is taken, the judge makes it over to the moolavie for his

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his futwah, which is his decision of whether the fact is proved, and how far perhaps the whole may not be. Sometimes, if the judge agrees with him, and it falls short of death or transportation for life, the judge records his opinion, sentence is carried into execution; if the judge disagrees with him, then the whole trial goes down to the sudder nizamut. But if the law officer finds that the fact is not proved, the prisoner is released immediately, unless indeed the judge, as an extraordinary circumstance, sees there is something improper, and takes on himself the responsibility of sending it down; but generally speaking, the prisoner is released immediately.

603. Now, supposing the charge is murder, and the facts given in evidence do not support that charge, is the verdict of the Mahomedan law officer confined to finding the facts not proved, or may he go on and say, that the facts do not amount to murder?—Certainly, he may say "homicide."

604. He may say it does not amount to murder, but to a lesser description of crime; "homicide?"—Yes.

605. If the Mahomedan law officer finds the prisoner guilty, the judge must either pronounce sentence, or he must refer the whole matter to the sudder, must he not?—If he finds him guilty, yes; if it is a minor offence, anything short of transportation or death.

606. He has no power to reverse the verdict, or futwah as they call it?—Oh, no. I have never met with but one man who would write his futwah and give his judgment without trying first indirectly to obtain the opinion of the European judge.

607. Do you think that that feeling would operate full as strongly, if not more so, if there were juries in civil or criminal cases?—Decidedly so, if they were neither under the influence of the zemindar, nor biassed by their own interest in favour of either party.

608. When you speak of the law officer attempting to ascertain your opinion before he gave his own, do you suppose that that was owing to a distrust of his own judgment, or a desire to win your favour?—No distrust of his own judgment; certainly not.

609. Purely a desire to win your favour?—Exactly so.

610. But when, as of course you resisted that attempt and compelled them to decide, could you trust their judgment?—Certainly; and I have met with one man, as I mentioned before, who never tried to ascertain the opinion of a judge, but gave his opinion.

611. Does the judge put the questions in general to the witnesses?—The native sheristadah or moonshee, who writes the examinations, puts the usual preliminary questions, and will continue to go on until the judge takes it up himself, and puts questions: and perhaps in little thefts, and matters of that kind, the judge will let the sheristadah go on, as a matter of course, with a great deal of it; but in matters of moment the judge will take it up sooner.

612. Does the law officer put questions?—The law officer is at liberty to do it, and perhaps occasionally may, but it is seldom that he does; the law officer is at liberty certainly by the regulations to do it.

613. Does he suggest questions?—I think he rather suggests than puts them.

614. Now after the judge has taken up the examination, does the sheristadah afterwards interfere at all in the examination?—The judge, when he leaves off, will

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will sometimes say, go on, and ask as to such a question; sometimes the examinations are so very voluminous, and some of the evidences very material, and others not so.

615. Is the whole taken in writing in civil as well as criminal cases; are the whole proceedings taken down in writing?—Why, with regard to civil cases, the vakeels, who are the counsel, do not plead *vivâ voce*, they give in their plaint and answer, reply and rejoinder. They bring it written into court, so many days being given between the receipt of each for them to answer. The evidence of the witnesses is also taken by the sheristadah in presence of the vakeels, and signed by the counsel on either side. If they were only signed by the counsel on the side of the plaintiff or the defendant, there might be a doubt about their being admitted by the other party, and therefore they are signed by both.

616. But, pray, are the vakeels of either party not heard on matters that occur during the pendency of the cause from time to time, what we should call interlocutory matters?—I cannot say they are not heard, but they do not plead in the manner they do at the bar here: they may find occasion sometimes for an observation, but not at any length.

617. No presenting a petition, for instance, to the judge?—Undoubtedly they may, and do present petitions constantly. After the answer has been given, the reply or the rejoinder, something may have escaped them, and then they will give in a petition, requesting that evidence may be taken on that point, so as it is given in before it comes to the hearing.

618. And they may be heard *vivâ voce* on the merits of that petition?—No, not heard *vivâ voce*, if it is given in beforehand in that manner; but occasionally during the trial they will be heard to a certain extent, if they have anything to bring forward in proof that the proceedings are at variance with the code of Indian laws.

619. Anything to show the proceedings are at variance with the regulations?—Yes, anything to that effect.

620. Are they heard willingly by the judge when they apply to be heard upon those particular points?—I have never been in any other man's court than my own, and therefore I can only speak to what I have done myself as judge of circuit or appeal. I do not recollect any complaint of that nature against the zillah judges.

621. You heard no complaint about their being prevented addressing the court on any point that was thought necessary?—No, it is not customary for them to address the court, but I have never heard any complaints of their being prevented.

Jovis, 12° die Aprilis, 1832.

The Right Hon. ROBERT GRANT in the Chair.

IV.
JUDICIAL.

12 April 1832.

Hon.
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The Honourable WILLIAM LESLIE MELVILLE called in and examined.

622. To what department do you belong?—The Bengal Civil department.

623. In what capacity did you serve?—I was for a short time in the Commercial and Salt departments, and I have been occasionally employed in the Revenue, and in some degree in the Political department, but I have served principally in the Judicial line.

624. In what judicial situation were you?—I served as Registrar in different districts; and in the year 1817 a rebellion broke out in the district of Kuttack, and I was employed with others in endeavouring to restore order in that province. I was afterwards Judge and Magistrate of the district of Ghazeepore, and I subsequently officiated as Judge in the court of appeal and circuit of Moorshedabad; and before leaving India in 1830, I was Commissioner of Circuit under the new arrangements at Bareilly, for one year.

625. Has it occurred to you that the judicial system, as administered by the Company's court, is susceptible of any improvements; and if so, name them?—The administration of criminal law seems to me much more satisfactory and perfect than the administration of civil justice. It is efficient in declaring punishment, in trying offenders, and more particularly in securing the innocent; but I am of opinion that the trial of offenders was better conducted under the courts of circuit than under the establishment recently created of resident commissioners. Some of the reasons for this opinion I stated in what is technically termed a Circuit Report, or Report written at the conclusion of a half-yearly sessions for Bareilly, and dated in October 1830, at the time I filled the office of commissioner there. I am further of opinion that the variety of characters and of views prevailing among the successive judges of circuit, with jurisdiction over an extensive range of country, freed them from local bias, while it tended to keep the whole of the subordinate district establishment alive and active. On the other hand, the more limited and local jurisdiction of the commissioners contributes, I think, to narrow and dull what falls within reach of their influence. Much immediate inconvenience has been occasioned too by suddenly placing officers whose lives had been passed in the revenue department, to preside in courts of circuit and regulate the conduct of experienced magistrates. The administration of criminal law under the system devised by Lord Cornwallis, has always appeared to me, as well as to other much more competent judges with whom I have communicated, to be the most successful part of our administration. Our civil courts are less successful, principally, I suppose, because the transactions coming before them for investigation are, as in other countries, much more difficult and complicated. Two or three circumstances appear to me to have contributed also to render

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render the civil courts less efficient than the criminal; one is the absence of check over inferior courts, from the want of a sufficiently rapid decision of appeals. The case of a criminal must be decided in a few months, and any error of the judge is promptly rectified by his superior; but a civil trial, however erroneous the decision, generally lies over for years untouched, and before it is examined the subordinate judge who has decided it is removed, the interest is passed, and the dry correction of the error is inserted in a fresh decree. In criminal trials, again, the highest court (or nizamut adawlut) holds English proceedings, and records in that language its opinion upon the case, pointing out any particular error committed in the conduct of the trial; while in civil suits there is generally no such powerful check. It must be admitted, too, that the constitution of the courts of appeal, and the perpetual liability of the judges to be interrupted in the middle of the civil causes before them by the return of the period for making the circuit, very much impeded and injured the transaction of civil business, and tended to throw much indirect power into the hands of the native officers. Much attention has been paid to the maintenance of proper tribunals and the use of effective processes, and many sound and right decisions are certainly given; and yet I am afraid we have failed considerably in giving a prompt restitution of things unjustly taken away or withheld. There seems to me a particular deficiency in the simple, distinct, uniform and constant recognition of rights, and in the effective enforcement of them: the rules, principles and precedents which should guide our decisions are not sufficiently adhered to; a succession of judges in the same court or in appeal take different views and pass a variety of orders; the case swells and too often exhibits a mere mass of confusion, from which it is no easy task to select the materials necessary for arriving at a correct conclusion. There are scarcely any laws, correctly so speaking, defining rights; we are obliged to frame our decisions either with reference to general principles or to the decisions of the sudder dewanny adawlut, or chief civil court, five or six volumes of whose reports have been published. I should conceive that they compose a valuable foundation on which a system of law might now be commenced. The recent arrangement, which will draw many valuable officers from all concern in the administration of civil business, to employ them as commissioners of revenue and circuit, seems to me to have further tended to deteriorate the administration of civil justice; but so lately as November last I understand that a civil court has been established in the western provinces. The measure appears to be a very judicious one, but I am not yet informed of the details. Perhaps I may be allowed to recall attention to an observation of the late Sir T. Munro, that the constitution, by which I understand the system of administering law and collecting revenue, should not be altered in India without authority from England: although in many respects the Indian government cannot be left too free to act on its own responsibility, yet I incline to think that such changes as these should only be undertaken after that deliberate and cautious inquiry, and with that prospect of stability which a full and anxious discussion has so great a tendency to promote.

626. You have alluded to the employment of natives in the judicial administration; do you conceive that they might be more extensively employed than at present, or that any arrangement might be made so as to render such

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a change of system efficient with respect to the administration of civil justice?—I observe that by a recent alteration in November last, the powers of the moonsiffs are considerably increased. I am generally favourable to the extension of the power of the moonsiffs, but in regard to the exact mode in which the recent change will operate, I am not yet sufficiently informed of the details to be able to judge.

627. Is there less complication in pleading in criminal causes than in civil, in your courts?—Pleading in criminal causes we have none.

628. Are your proceedings *ore tenus?*—Entirely; there is simply a charge inserted in the calendar, and that charge comes to trial without any pleadings.

629. In civil causes are your pleadings conducted in Persian?—They are.

630. Do you think that a desirable system, being in a language foreign to all parties, plaintiff, defendant and witnesses?—It is at the same time generally and familiarly studied by every native of education or rank in India. I have never paid any particular attention to the point myself; but partly from its having been so long and generally employed, and partly owing to the structure of the language, I believe it is found a more convenient and shorter mode of expressing evidence than the other native language of India.

631. Should you think the gradual substitution of English advisable?—The gradual substitution of English I should certainly think very desirable, but it must be very gradual. Our Bengal provinces are not at present prepared for such a change.

632. What is your opinion as to the substitution of the language of the country in which the court may be held, instead of a foreign one, such as Persian is in most parts of India?—I am not aware that much practical inconvenience is experienced from conducting the pleadings and from writing the evidence in Persian; some facilities exist, for the reasons I have already assigned.

633. Is an interpreter employed?—No; in point of fact, ordinarily speaking, the evidence which is delivered in the vernacular language, whatever it may be, of the witnesses, is seldom written down in that language, but it is translated into Persian by the writer, as he goes along. The confessions of prisoners, by a special order, must be taken down in the language in which they are delivered.

634. What means has the prisoner of checking the evidence taken down in a language he does not understand?—Certainly not much; it is the duty of the presiding judge to take care of that.

635. Do the prisoners commonly employ vakeels or agents of any kind to conduct their defence?—No; I do not recollect any instance of that kind.

636. Is the evidence, when taken down in Persian, ever read over afterwards, or translated and read over to the prisoner?—He hears it when it is delivered, and if any question arises regarding it, of course it would be translated and read over to him.

637. But it is not the common practice to do so?—It is not the common practice to read it over in the language in which it was delivered, after it has been taken down.

638. In what language is the judgment delivered in criminal cases?—The judgment is delivered, in fact, by the issue of a warrant; an intimation is given which

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which is written in three languages, English, Persian, and the language of the country.

639. Is the judgment written down?—The warrant is issued by the judge holding the circuit in those three languages, in the heavier class of offences; and intimation is given accordingly to the prisoner of the punishment to which he is sentenced, in his own language.

640. How is it in the lighter cases, misdemeanors for instance?—The magistrate intimates, in the prisoner's own language, the sentence passed on him.

641. Is that sentence formally reduced into Persian also?—The sentence is also reduced into Persian, although no warrant is issued. By a recent rule, a copy of the sentence passed on each prisoner is furnished to him, in consequence of some mistake having occurred.

642. Is that copy in his language?—It is in the vernacular language.

643. Does the judge who tries the prisoner commonly understand the Persian, in which the evidence is taken down?—I should suppose so.

644. Those judges are at the present moment commissioners of revenue, are they not?—I am not quite sure; I think I have heard that in the western provinces the office of commissioner of circuit and commissioner of revenue had been separated very recently, the duties being found too laborious.

645. How was it at the time when you were in India?—At the time I was in India I held the office of commissioner of both revenue and circuit.

646. Is a prisoner allowed to cross-examine a witness?—Certainly.

647. Is the evidence always delivered within the hearing of the judge in criminal trials?—In the heavier class of offences, in trials before the court of circuit, the evidence is always delivered in the hearing of the judge. In misdemeanors and the smaller offences, the evidence is taken down in the presence of the judge; but the cases are so numerous that it is found impracticable that he should superintend taking down the evidence in each separate trial. The parties, witnesses and prisoners, therefore, are brought up before the magistrate after the evidence has been taken down, and such questions as may be necessary to verify the examination and elucidate the case are then asked by the magistrate. The evidence which is taken down in Persian, is read over in Persian to the magistrate.

648. In the case of a prisoner wishing to cross-examine, does he cross-examine the witness in the presence of the judge, or does he cross-examine him in a corner of the room where the evidence is taken down?—More usually while the evidence is being given in court.

649. Do all the witnesses constantly attend before the magistrate at the time the evidence is read over?—Uniformly.

650. But then the evidence is read over in the language which they do not probably understand?—Certainly; and that is the object of the questions put by the magistrate, to verify the evidence.

651. Is the evidence taken down in the language of the witness, or only in Persian?—Only in the Persian; but in the province of Bengal I think it is occasionally taken down in Bengalee.

652. And is that Bengalee in writing turned into Persian by any officer of the court?—It is. It was found, to the best of my recollection, that those local dialects were

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were so numerous that there was considerable difficulty in understanding them. In the serious trials which were referred to the court of nizamut adawlut, or superior criminal court in Calcutta, circular instructions were issued directing that all evidence or depositions not taken down in Persian should be accompanied by a translation into Persian.

653. Is not the Bengalee the language of a great nation?—It is; but on the borders there is a different dialect.

654. Is not Bengalee the language of many millions?—I should think so, certainly.

655. Is it not the only language in general which those millions speak?—The much larger proportion in every village of Bengal understand nothing except Bengalee.

656. But rarely any that understand Persian?—No. In any considerable town there are always two or three schools for Persian.

657. What class of cases would those be in which the evidence was not taken down within the hearing of the magistrate?—Misdemeanors principally, and occasionally cases of petty theft; the magistrate is occasionally empowered to sentence to two years' imprisonment for certain offences. In these the evidence is taken under the magistrate's superintendence.

658. Is it not so universally?—I can only speak of my own practice.

659. In your own practice were those cases always taken in your own hearing?—Generally, I should say, the evidence was taken in my presence.

660. How often are the assizes for the trial of crimes of a graver description held?—The rule is that the sessions should be held half-yearly, but sometimes owing to various causes much longer intervals elapse.

661. What is the longest interval that you have known to have elapsed?—I think, in some of the trials that came before me at the sessions that were held immediately before I left India in 1830, some of the cases had lain over for 18 months, and I rather believe there were a few which had remained untried for nearly two years.

662. How frequently had the sessions been held within those two years?—There have been one or two sessions, and the one in which I was engaged occupied several months.

663. Then there is not a complete gaol delivery at each sessions?—The particular cases I have referred to occurred on the introduction of a new system and a new tribunal; and thus, I suppose, some delay and embarrassment arose.

664. Previous to the introduction of a new species of tribunal there was a complete gaol delivery each sessions?—Certainly; complete in the ordinary acceptation of the term, the cases of all the prisoners committed were disposed of unless special reasons occurred for postponing the trial.

665. Is the punishment of death frequently awarded in India?—Much more rarely than in England.

666. Can that punishment be carried into execution without the sanction of the Nizamut Adawlut?—Certainly not.

667. What is the usual mode of punishment in India of crimes of a serious description?—Imprisonment, frequently accompanied with hard labour on the public

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public roads; often with banishment, and sometimes with corporal punishment. Some few offences are punished by public exposure.

668. Is mutilation discontinued?—In every case in which mutilation is prescribed by the Mahomedan law, it is commuted to imprisonment.

669. What is understood by banishment?—Partly being removed to a different part of the country, remote from the residence of the prisoner's family; partly transportation beyond sea, as to Prince of Wales' Island or Malacca, within certain limits prescribed by Act of Parliament.

670. What change in the judicial system will be expedient and practicable, in the event of a materially increased influx into the Indian provinces of European settlers or residents?—I have never much considered that question, but I conceive our institutions and laws ought to be framed with reference to the great mass of our population; for the millions and not for the tens. I do not see any good reason why a few British subjects should have special laws, special tribunals, and special protection for themselves; as in other foreign countries, they ought, I conceive, to content themselves with an administration of justice inferior to that of this country. For a special purpose they choose to sacrifice a portion of their rights, and I do not conceive that they are entitled to complain of their bargain.

671. Then you conceive it necessary that they should be amenable to the law as administered in the provinces?—Yes.

672. Do you think that British subjects would feel any indisposition to be tried in criminal cases according to the rules of the Mahomedan law?—If it is supposed from the question that the Mahomedan criminal law is now administered by our courts, I conceive that not to be the case, it is so entirely modified to correspond with the provisions of the codes of Europe.

673. Is it modified by the regulations?—Yes.

674. Is the Hindoo law administered in any criminal cases in India?—No, not in any.

675. Then the criminal law which is administered in India is the Mahomedan law, unless in cases where that Mahomedan law is modified or qualified by the regulations?—By the regulations in some degree, also by practice and precedent, and what is termed circular orders from the superior court.

676. Are those circular orders mere explanations of the laws then enacted?—They are.

677. Have they in fact any power to change the law at all?—Certainly not.

678. Must any modifications or qualifications of the Mahomedan law be made by the authority of the government by regulations?—Alterations must be so made; that is provided for by Act of Parliament and by our regulations; explanations may be conveyed in circular orders.

679. Do you think there would be any objection that a British subject should be tried by the Mahomedan law, modified as it is by the regulations?—No; generally speaking, no particular objection occurs to me. Perhaps I ought to explain that I conceive that the power of legislating on the subject should belong to the local government, and should not be reserved to the authorities in this country.

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680. Upon a criminal trial, does the Mahomedan law officer sit with the judge?—Yes.

681. Does he hear all the evidence?—Certainly.

682. And he by his futwa finds whether the fact is proved or not?—Yes.

683. Then he is somewhat in the nature of a jury in that respect?—Yes, excepting that he does not decide the cause; whatever his finding may be, it does not bind the judge.

684. Can the judge decide contrary to the finding of the Mahomedan law officer?—If the trial is held before the court of circuit, in the event of the judge differing from the Mahomedan law officer, a reference is made to the court of Nizamut Adawlut or superior criminal court in Calcutta. If a difference of opinion occurs in that superior court, I think reference is made to another judge, and it is competent to a majority of the nizamut adawlut to pass any sentence without reference to the futwa.

685. If the futwa has acquitted the prisoner, can the nizamut adawlut direct punishment to be awarded against him?—By Section 4, Regulation XVII. A. D. 1817, and by Section 7, Regulation IV. A. D. 1822, the nizamut adawlut appears to have the power.

686. If the judge does not object to the finding of the Mahomedan law officer, in all cases except capital, he may immediately award punishment on the finding?—Yes, excepting where the punishment is either capital or involves imprisonment for life. Perhaps I ought to explain, that it is in the power of the Governor-general in Council to dispense with the sitting of the Mahomedan law officer altogether, in any case which it appears more desirable to conduct without his interposition. The law, Regulation I. 1810, originated I think in consequence of a quarrel between two French gentlemen at Chandernagore, which terminated in the death of one of them in a duel; the inconvenience of having a Mahomedan law officer to pronounce in such a case was felt, and the enactment was passed.

687. Was that a general regulation passed upon the happening of this very particular case?—My impression is that it arose principally from that circumstance; I had nothing to do with it; probably other cases occurred.

688. Is it now the law, according to the regulations of the government, that a Mahomedan may be tried by the English judge without the presence of the Mahomedan law officer?—My impression is so, under the regulation above quoted.

689. Do you think the law, as you have stated it, of criminal trials in India, under the regulations, such that there would be no objection that a British subject should be exposed to that mode of trial?—No material inconvenience immediately occurs to me, and if any arose I conceive it would be easily rectified by the government by another regulation. As far as I am capable of judging, I should say Acts of Parliament are found wanting in the pliability and adaptation to the actual wants of the people which is desirable in legislation.

690. May a regulation of government be passed in matters relating to the administration of justice, operating upon all persons in India, excepting British subjects?—Yes. Perhaps I ought to mention that many provisions in Acts of Parliament relating to India, passed within my own recollection, have been found inoperative when attempted to be enforced.

691. Would

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691. Would you recommend the establishment of anything in the nature of a legislative body or legislative council in India, to make laws for all persons whomsoever, including British subjects?—I think I have heard that such a proposal was made, but I have not seen the papers with regard to it, and I am not prepared to pronounce upon it. It occurs to me that the judges of the supreme court, whom I believe it was proposed to include in the council, might assist most materially in compiling a civil and criminal code from the mass of decisions passed by the King's and superior native courts, but I should doubt whether they would find themselves equally competent to pronounce on other very important subjects, as the relative rights of landholders and tenantry; and by the time they could among their other occupations have acquired that knowledge, the period of service which can be expected from them would perhaps have expired.

692. Do you think they might be safely associated with persons conversant with the administration of justice in the province, for the purpose of making laws from time to time, as occasion required?—I conceive they would be extremely useful in compiling laws in the mode I have indicated; but I should doubt, in our revenue system and in various other details of our administration, as they are very complicated, whether the subjects came so much before the judges in their ordinary occupation as to facilitate their mastering those questions.

693. Have you any doubt that if it were expedient to establish a legislative body or council in India, for the purpose of making laws from time to time for all descriptions of persons, including British subjects, that the judges of the supreme courts could be very usefully associated as members of that body?—Certainly very usefully, to the extent I have endeavoured to point out; but further it might depend upon the provisions under which such a council might sit. If any member had the power of deferring the enactment of the law until he had thoroughly satisfied himself of the expediency of passing it, embarrassments might arise.

694. Have you made up your mind at all whether it would be expedient to have a council in India for the purpose of making laws for India, either council or government, or whether a body ought to be established to make laws in India for India, whether that body be composed of the judges and the council, or whether it be composed of the government alone?—I have already, I believe, pointed out that in my opinion no alteration should be made in the constitution in India, that is, as I understand it, the system of administering law and of collecting the revenue, without communication with this country, but all other subjects I think had better be subject to the regulation of the authorities in that country; and I can easily suppose certain regulations under which a legislative council composed in the manner suggested, partly of judges of the superior court, partly of the government, might be rendered extremely useful.

695. But in matters of revenue do you think they ought to communicate with some authority at home?—I do not think the system under which our revenue administration is conducted should be changed without previous reference to this country; I may add, that I think changes have been so frequent as to be very prejudicial already.

696. Would you not think it right that the power of legislating in matters of revenue should be confined to this country?—By no means.

 697. But

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697. But you think important matters affecting the revenue ought not to be legislated upon in India, without communication with the authorities at home?—I conceive they do not acquire the degree of consistency and stability which is the foundation of all improvements without such communication.

698. But do you think that all matters relating to the administration of justice for all descriptions of persons could be safely confided to such a legislative council in India?—Generally speaking, with the control that already exists in this country, partly from public opinion, partly from the appeal allowed to the King in Council, and the other checks which exist, I should apprehend that it was extremely improbable that government would abuse any authority of the kind that might be entrusted to it.

699. If opportunity was given for the admission of British subjects to settle in any parts of India, do you not think such a power of providing by a legislative council for the administration of justice in the country would very much tend to render the step more safe and proper?—Yes, certainly, either by the government or the legislative council.

700. Do you conceive natives might be more generally employed in the administration of justice in India than they are at the present moment?—If it was proposed to substitute native juries for the present tribunal, I apprehend the result would be an entire failure. As I have already explained, I am very sensible of the defects of the present establishment; but I conceive much greater and more hopeless disorders must ensue from such a change as that. There seems to me great want of the materials necessary to compose tribunals at all resembling English juries. If all the testimony delivered on the subject of India agrees in anything, it surely is in representing the low state of moral feeling exhibited in our courts of justice. Native officers and retainers, no less than suitors and witnesses, are all represented as false and corrupt. With the exception of the class of native officers called sudder ameens, or superior native judges, or the law officers, there is little of native respectability to be found. That the native character possesses much that is estimable, is unquestionable; but we have not very well succeeded in bringing the virtues of integrity and truth to assist in the administration of justice. That by legislation on the supposition of the existence of those virtues we should immediately bring the virtues themselves into active exercise, is I fear a theory more pleasing to the imagination than founded in any extensive experience of mankind. I speak not of other countries or of other societies, but of the presidency of Bengal; and I am persuaded the soundest opinions there will be adverse to supplying the demand for justice by juries independent of European control. Most judges are, I believe, at first smitten with the idea of disposing of cases by arbitration, by punchayet; under the rules already in force, it appears as if it would both save trouble and give satisfaction: Soon impediments multiply: one or other party objects to the course of proceeding, or some of the punchayet is ill, or cannot or will not attend, or it is alleged that they will not hear some of the evidence, or that the decision is directly at variance with the evidence. The court gets embarrassed between the desire to support the punchayet and to prevent the abuses charged; whatever the errors of the punchayet may be, it is reluctant to make them defendants; the cause lingers, and I fear little satisfaction is offered. From my own experience, I should say

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say punchayets seldom answered, excepting in the very rare case where the opposing parties both desired in good faith to have their respective rights ascertained and determined. Another tribunal, somewhat analogous to what is proposed, is that of native courts-martial for the trial of offenders against military law. These are independent courts, and I think it is admitted that they have altogether failed in administering impartial justice. They are either merely passive instruments in the hands of the judge-advocate or superintendent officer, or more frequently, where the offender is a native officer, they deliberately shield him, whatever may be the evidence or charge against him. The general orders of the Bengal army constantly recorded the most severe censures passed by the commander-in-chief against the sentences of native courts-martial; and whatever difficulties may arise in recalling the power of trial, I believe all intelligent officers regret it was ever conferred. It is to be borne in mind that the army of Bengal is not, like European armies, recruited from the lowest ranks of society, but from that rank which should furnish jurymen.

701. You state that those who compose the army in India are generally of a more respectable class than those who compose the armies of Europe?—Yes.

702. And yet you state that great objections have been taken to investing those persons with the powers of sitting in courts-martial?—Yes, as a court having the power of pronouncing sentence on their fellows.

703. You believe private soldiers do not sit in courts-martials, but their native officers do?—Yes. The people of India possess a singular facility of combining, and silently but effectually resisting authority. Where so many circumstances occur to fetter the mind, much freedom in opinion and integrity in judging is scarcely to be expected, and influences very different from the abstract love of justice must be anticipated. If juries should be tried and fail to answer the end proposed, I fear they might be a very grievous instrument of oppression, injustice, and fraud; the more intolerable because no mode occurs to me of correcting their errors on appeal, however gross the failure of justice. I have, however, for some time been of opinion that some additional facilities in employing natives in administering both civil and criminal justice might be afforded to the courts. It occurs to me that it might be rendered optional with judges to summon punchayets or assessors, to aid him in cases in which he saw a reasonable ground to believe it might promote the ends of justice; but they should rather act as assessors to advise the judge than decide themselves. A discreet judge, and probably only such would summon a jury, would treat them with a degree of respect and consideration which would afford them ample encouragement; and should the institution be found to answer, their powers might be increased. To illustrate my meaning, I may mention a criminal trial, my notes in which I happen to have with me: it was a charge against two bankers composing a firm, for stealing a letter containing drafts for large sums of money, forging and uttering the indorsement, and thereby obtaining the money. The greater part of the trial consisted of an examination of the truth or falsehood of certain bankers' books; and another point was respecting the usages of brokers in negociating bills. The trial lasted, I think, ten or twelve days, and I remember feeling how much assistance I could have derived from some of the many bankers and merchants whom curiosity led to attend, had the law or usages of our court permitted me to have availed myself of that knowledge and

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experience in a description of business with which I was unacquainted. After the trial, I heard that a punchayet sat to determine whether business should in future be transacted with the firm in question, and I found I had arrived at the same conclusion with the jury, though probably by a much more circuitous course. In the very common offence of affrays or village quarrels, and in numerous others, I incline to think that material assistance might often be obtained from a punchayet, and I perceive no material objection to making the experiment. In civil suits, in like manner, in questions of disputed boundaries, of disputed accounts, or of caste or others, much aid might be obtained from the natives. At present, all reports on matters of fact are prohibited, except where both parties agree to a reference to arbitration; and if one party absent himself, the court, however unequal to the duty, must enter into the examination of the most complicated accounts and transactions, and I think some discretion on this point ought to be vested in the court. I understand that some provision of the nature of that above suggested has been introduced under the presidency of Bombay, but I do not know with what success.

704. You have stated in your evidence that larger powers have been given to the native judges to try civil causes than they possessed heretofore; do you know to what extent that power has been increased?—The principal sudder ameens are empowered to try to the extent of 5,000 rupees, the ordinary sudder ameens to the extent of 1,000 rupees; the powers of the moonsiffs are also increased, they are now entitled to try suits for personal property to the value of 300 rupees, and also suits for real property for the same value, with certain exceptions.

705. Do you conceive that such increased powers can be given to natives as judges or assessors, consistent with the large introduction of Europeans in the interior as settlers or residents?—I should certainly not consider it desirable to vest natives with jurisdiction over British subjects at any place other than that in which a European judge holds his court. I think assistance might be derived from the natives, in administering the law with regard to Europeans, if an European judge presided.

706. Then you conceive that all the cases which might arise between the European so situated and a native, should be tried in the zillah court, before an European judge, and not before a native judge?—Generally I should conceive it desirable that cases in which Europeans are concerned should be tried under the immediate superintendence of an European judge.

707. Do you think it would be satisfactory to the natives themselves that their causes were tried by a native judge, without the supervision of any European?—Generally speaking, I should say it was not desirable to invest the natives with final jurisdiction. There are instances of persons as able and as intelligent and as pure as any European, but the general tendency is otherwise, particularly in regard to integrity. The natives are inclined to suspect the integrity of each other.

708. Have the salaries of the judges been increased from the time their powers have been augmented?—I am not aware whether that is the case; I have merely seen an abstract of a regulation, in which the remuneration to be afforded them would not be inserted.

709. Do

709. Do you not conceive, the suspicion of our impure administration of justice in the hands of natives, in some degree arises from the lowness of the salaries they receive?—The class whom we have paid as native gentlemen, and treated as native gentlemen, is the only class who I conceive have maintained their respectability. 12 April 1832. Hon. *W. Leslie Melville.*

710. In what way are the native judges generally treated by the European judge; with respect or otherwise?—Certainly not with disrespect, but there are different grades of native judges.

711. Are they allowed to sit in the judge's presence?—The higher class undoubtedly.

712. Are the sudder ameens allowed?—Generally; but it depends on their rank.

713. Is it not frequently the case that a native of some rank is not allowed to sit in the presence of an European judge?—The feeling on that subject, and the observances on this point were very strictly enforced, I imagine, under the Mahomedan government, and in the earlier periods of our government we were perhaps somewhat tenacious upon it, but I think we are gradually becoming less so. In the great majority of cases it is immediately understood whether the person is or not sufficiently high in rank to sit, and in doubtful cases the general disposition is to allow him a chair.

714. Is there any addition you wish to make to the evidence you have given?— Several questions were put to me upon the subject of a legislative council as applicable to India; and it has occurred to me to mention that an admixture of the gentlemen educated at the Scotch bar might be useful in a council of that nature, in administering the law contained in the Mahomedan and Hindoo codes; the code of Scotland being more founded on the civil law and on general principles than perhaps the law of England. 16 April 1832.

Veneris, 13° die Aprilis 1832.

The Right Hon. ROBERT GRANT in the Chair.

ROBERT NORTH COLLIE HAMILTON, Esq. called in and examined.

715. WHERE has your service been?—In the Bengal presidency, chiefly in the Judicial department at Benares as a Magistrate, and latterly as Deputy Secretary in the Judicial department at Calcutta. 13 April 1832. *R. N. C. Hamilton, Esq.*

716. On the supposition that Europeans in increased numbers were to become settlers in the interior of India, should you consider the judicial system of the country courts as at present established to be sufficient for that state of things, or would you recommend any and what changes?—It depends chiefly on what will be the nature of the settlers; if they were people of large property and capital simply residing there on estates, the present system would be sufficient, but if there were to be a mass of people of an inferior order it would require some alteration. I do not suppose that the natives themselves would be fit or capable.

717. Do

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717. Do you mean to say that the courts in which natives were judges are not competent to try Europeans?—They would not be.

718. Do you speak of the natives immediately at the present time, or do you suppose that by degrees their general character has so improved as to render them competent to try Europeans, either criminally or civilly?—I should think it would take a great lapse of time before they were competent.

719. Could you not say that within the period of your acquaintance with India there has taken place among the natives, especially at the presidency, a very great change of character?—A material change.

720. Have they not acquired more confidence in themselves, and do they not more easily conform to the European modes?—They acquire more confidence in the European modes, and are more confident in the system under which they live.

721. It is found that what at that time was a prevalent opinion of the unchangeableness of the native character has been a good deal modified?—Yes, they are fast improving now.

722. You think any further change so great as to render it fit to seat them in judgment on Europeans, must be the work of a very long time?—To make them impartial judges.

723. You do not mean by competency that the state of their minds and faculties is so inferior, but on account of their moral character?—Certainly.

724. What do you conceive would be the defectiveness of a native tribunal sitting in judgment where Europeans were concerned, civilly or criminally?—If the Europeans were influential persons, they would be partial; if there was a lower class of persons of no importance at all, they might be tyrannical and arbitrary.

725. Do you think that any evil effect would be produced, on the opinions entertained among natives in general of Europeans?—I think every decision that tended to lower the character of the Europeans, would lower them in their estimation.

726. Would the circumstance of the natives sitting in judgment upon the Europeans impair the native in the estimation of the Europeans; the fact of their being subjected to the natives?—Certainly; it is not under a native state, for in a native state an European is nothing more than another subject.

727. Supposing an increased number of Europeans to reside in the country, either as settlers having property, or in any employment in the country of a lower kind, do you think the present judicial system of the Company, in point of extent and magnitude, sufficient to administer justice under such circumstances?—I think the present judicial system is as small as it can possibly be, it is barely sufficient in some of the largest districts to superintend now sufficiently every part of the district, but I do not think the increase of Europeans would cause an increase of crime so as to occasion greater work. I think you would require Europeans to try Europeans, and therefore that would be an additional expense and a material one.

728. In addition to the present courts?—I do not think the present native courts constituted of natives are calculated to try Europeans for criminal offences.

729. Do you mean with an European judge remaining as he does; do you think the court under such judge or assistant is not sufficient to administer justice where the Europeans are concerned?—Certainly, I consider it very doubtful.

730. Do

730. Do you think the European judge or assistant would be relieved by the native officer being appointed to try the native cases; and being so relieved, do you suppose the present European establishment sufficiently large?—Confining it to this; if the Europeans are to hear cases in which the Europeans were concerned (taking them entirely from the natives), it ceases to be a *native* tribunal.

731. In that case you think the present European judicial force would be sufficient?—Yes. There is a system about to be introduced in which the powers of the natives would be equal almost to what was the power of the European judges in civil courts some years ago; it is with reference to this my answer applies. I do not think those natives who have got the additional power, are competent to give impartial decisions in a case. I confine my remark to a court in which a native alone presides, of course subject to appeal.

732. It is understood that the Europeans going into the interior under local licenses, did thereby subject themselves to the country courts; at present would that engagement oblige them to submit to the jurisdiction of courts where the natives alone preside at present?—Yes, it would, according to the tenor of their *local* license.

733. Do you know, in point of fact, whether the Europeans have ever been subjected to courts where natives preside, by local license or otherwise?—In civil matters.

734. You know that?—An European can hold land now for any suits that arise out of his engagements with natives in the course of trade or agriculture; those suits may be heard in a native court, where a native only presides; he is obliged to abide by the decision of that court as much as another.

735. Does it in point of fact frequently happen?—Not very frequently.

736. Not often enough so that you can draw a general rule how far the natives could be found efficient?—The case is this, an European seldom lets his name appear to a suit; so that if you were to take the file of a court and look through to see who sues, you would find the agent, who is the native prosecutor; unless therefore you know for whom he was the agent, you could not know who was the principal.

737. This is confined to civil cases?—In criminal cases he must appear in person.

738. According to your opinion, the effect of the experiment which is now trying of the more extensive employment of natives in the administration of justice, is comparatively of very little value on the supposition that a great number of Europeans became residents in the country?—In that point of view it is.

739. Can you state the outline of any changes that were in contemplation in the administration of civil justice, at the time of your leaving India?—When I left India in last January twelvemonth, the draft of a regulation had been prepared by which the native courts were to be remodelled. Formerly the civil courts consisted of a judge or registrar, who was limited to hear suits under 500 rupees, and from 500 rupees to 1,000 rupees. There were two classes of registrars. The native judges, called sudder aumeens, were limited to the trial of suits not exceeding 500 rupees, generally not exceeding 250. Under these sudder aumeens there was a class of civil officers, moonsiffs, who tried suits of a minor extent in the interior of the districts. By the new scheme the office of registrar was done away, and sudder

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sudder aumeens were to be empowered to try suits from 1,000 to 5,000 rupees, and an increase of powers of a corresponding nature was given to the inferior courts. This would materially lessen the business before the judge, who was to confine himself to hear the original suits of a larger amount; appeals from the superior sudder aumeens sedam, who were competent to hear appeals from the inferior courts. This was the outline of the measure which had been before government, but was sent for report to the judges of the superior court, sudder dewanny adawlut, whose opinion on it had not been received. That would alter the whole system of civil courts.

740. Has the salary of native judges been increased?—The salary of the native judges of the first class was to be from 500 to 1,000 rupees a month.

741. What are they now?—From 100 to 200, some 350 rupees.

742. Some were 350?—Their salary ranged from 100 to 350 rupees a month.

743. What was to be the salary of the moonsiffs?—That was to be raised to 100 and 150, from 25 to 50 rupees.

744. Is there to be any regulation about these?—Yes; there was to be an extension of power in proportion to what they had before. The moonsiff has a local court in the districts.

745. The sudder aumeen being extended to 5,000 rupees, is there a similar extension?—There are three classes of sudder aumeens; one to hear suits under 5,000 rupees, another from 500 to 1,000, and the third from 1,000 to 5,000. The moonsiffs were to hear minor suits in the interior of the districts; the other courts being at the zillah station. An ultimate appeal would come to the zillah judge (the European functionary), and that would be final, from the moonsiffs.

746. Would the provincial courts be done away with?—Yes.

747. Do you know anything of the calculation of the expense of the new system as compared with the old?—It was calculated not to increase the expenditure, by the reduction of the office of registrar; his salary, as well as the expenses of the provincial courts of appeal, would defray the increased salaries of the natives.

748. What would become of the provincial judges, those who act now?—They were to be absorbed into the service.

749. In what way was criminal justice to be administered?—Its administration is completely changed: the court of circuit and the provincial court of appeal were one; they are subdivided; there is now a commissioner of circuit, and the old provincial court of appeal remains.

750. The alteration has been some time; the commissioner of revenue has been the judge of the circuit?—I think the regulation was in 1829.

751. That has been fully carried into effect, it is no part of this new plan?—The part relating to criminal courts had been carried into effect, and failed I am afraid from uniting the revenue and judicial powers, thus loading the functionary with work he could not do.

752. It failed from the incompetency of the individual to discharge both duties?—From want of time he was incompetent.

753. Have the Hindoos or Mahomedan natives ever been employed in juries in Calcutta to your knowledge?—I have not heard of any jury being empannelled solely of Hindoos or Mahomedans.

754. You

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754. You doubt if it is possible they should be?—I consider it impossible for a native jury to be empannelled for the trial of any native, from the natural prejudices as to caste; a respectable or high-caste Hindoo would think it a degradation to sit upon a jury in which an inferior caste was to be tried, and an inferior caste would, by his religion, consider he had committed a sin in bringing disgrace and punishment on a Brahmin.

755. How far does that principle operate in courts-martial among the native troops?—I believe there is no low-caste man enlisted in the army. I cannot be competent to give evidence on military matters, but the common soldier is supposed to be a man of respectable caste before he is enlisted; I do not suppose there is the lowest caste of Hindoo in the army. I do not believe a native court-martial ever sits without being superintended by an European officer; the interpreter of the regiment is usually the superintendent of all native regimental court-martials.

756. Do you not conceive that a species of jury might be appointed in different courts, taken from officers and agents who were in the habit of attending the courts?—I think that would be most prejudicial as far as impartiality is concerned; I think every man who receives pay about the court is the last man who ought to be employed. If you take a man who holds an office in one district, and make him a juror in another, you must have some one to do his work during his absence. Competency as to intellect I do not dispute; but the question is, if a man who has retired from the service from age, living 200 miles off, would like to be summoned to sit on a jury. There was a calculation made of what would be the expense supposing native juries were to be assembled at the assizes or sessions, and the expense of one sessions was nearly 50,000 rupees per annum; that is the amount by a calculation of Mr. Leycester, late chief judge of the sudder, recorded on the minutes of the court.

757. But upon the trial of criminal cases the native officer who attends acts somewhat in the nature of a juror?—There are regulations empowering the presiding judge to set aside the (futwah) opinion of the moolavie, who is always attended by one.

758. Who finds the matter of fact?—He finds guilty or not guilty; but there is a regulation by which the courts are empowered to set aside that decision.

759. If it is a conviction, but not an acquittal?—The futwah which is given acquitting a man at Benares, may be reversed by the superior court; or the commissioner's decision at Benares can be reversed by the nizamut adawlut.

760. What can he do; can he reverse the judgment?—The whole trial goes down.

761. Supposing a person is acquitted by the futwah of the Mahomedan officer, if the commissioner of circuit approves of it, it is final; if he disapproves of it, it goes to the nizamut adawlut?—Yes.

762. May the sudder nizamut adawlut set aside the futwah, and pronounce judgment on this person who is declared not guilty by the futwah?—By the futwah the court are not guided; they give their opinion as if it were a new trial before them, on the whole case.

763. But without hearing new evidence?—They can send the case back to have more evidence taken. It is almost a new trial in the event of the European functionary

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tionary and the law officer not agreeing; if they agree, the thing is final; still the higher court has the power of sending for the evidence.

764. Do such references often take place?—Constantly; that is in case of the judge disagreeing.

765. Upon the same evidence upon which the Mahomedan law officer has found that the party is not guilty, the nizamut adawlut may pronounce him guilty, and sentence him to punishment?—It is their verdict on the evidence that comes before them; every word having been taken down. They may quash the indictment and send it back, or they may decide the contrary.

766. What is the usual practice; to refer it to another trial, or give a decision upon it?—I do not think I ever recollect a trial in that way being quashed; not commonly; they generally decide on it as it goes down.

767. If the moolavie (the Mahomedan law officer) should pronounce and say "not guilty," and the opinion of the European judge should be "guilty," in that case the nizamut adawlut would decide in favour of the judge?—The nizamut adawlut will sometimes decide one way and sometimes another; they sometimes agree with the moolavie and sometimes not.

768. Suppose the native should say "guilty," and the European judge should be positive it is a case for acquittal, is not his decision final?—No; in all cases in which they disagree, let their disagreement be how it may, it must go to the superior court.

769. A capital sentence cannot be pronounced unless submitted to the nizamut adawlut?—I do not think the commissioner of circuit can sentence to more than 14 years' imprisonment or banishment.

770. Does the nizamut adawlut hear fresh evidence?—They are empowered to hear it if they think fit.

771. Hear it, or send for it?—They must send for it; sometimes it is 1,200 miles.

772. They rarely send for fresh evidence?—There must be one opinion for an acquittal, and they generally acquit where there is a doubt; they are more disposed to acquit than convict in those cases; but then the court of the nizamut adawlut consists of three or four or five judges, two of the judges may acquit and three convict. There is a curious case of embezzlement for a large amount of the Benares mint pending, in which the judges of the nizamut adawlut found the prisoner guilty, and the quantum of punishment is what they do not make up their minds to; they differ among themselves, and the case is lying over owing to the death of the senior judge.

773. In that case there was a difference between the moolavie and the European judge?—Yes; I think the moolavie acquitted and the commissioner of circuit found guilty: it has gone to the sudder nizamut, and the judges have found the guilt, but the measure of punishment remains doubtful.

774. Are there no means of coming to a decision on the punishment?—There ought to be.

775. Is the judge in the habit of making observations on the evidence, before the moolavie pronounces his futwah?—No: I never have myself sat on those cases. On the close of an evidence the moolavie can cross-examine any witness he pleases, and

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and on the close of the case the European judge desires him to give his futwah in writing, first as to the guilt, and in the event of guilt, what would be the punishment by the Mahomedan law. If he agrees in the guilt, and it is a case in which he is competent to pass judgment, he does so, reporting it to the nizamut adawlut; but if he disagrees with the futwah as to the guilt or innocence, he sends the case down with the futwah, and his own opinion on the merits and particulars of the case. To the superior court he gives his reasons in detail.

776. Do you think, by the forms of law in criminal proceedings in India, the life and personal liberty of the native are well secured, or otherwise?—I think for the purposes of justice it is perfectly sufficient.

777. There is often considerable difficulty in convicting?—In the course of nine years' residence at Benares, in which I was connected with the magistrate's office, I do not think there were above three capital punishments, that is, sentences of death.

778. How many capital charges might there be in that time?—There is a statement I have given in; I suppose the capital charges were 200 a year.

779. Did that number arise from acquittals or commutations?—There were plenty of punishments of imprisonment and transportation.

780. There is considerable difficulty, is there not, in convicting in the criminal courts of India?—Yes; I think the tendency is more to acquit than convict. If you take the result of the trials, you will find more acquittals than convictions.

781. To what do you attribute that?—To the difficulty of convicting; to the difficulty of finding conclusive evidence.

782. Is not the law of evidence the Mahomedan law of evidence, unless it be modified; and is any particular number of witnesses required to prove a fact in a criminal case by the law as it obtains?—No.

783. Can one witness be sufficient if the moolavie believes him?—The moolavie will not give his futwah by our law; it will be according to the Mahomedan law.

784. His decision will be according to the Mahomedan law?—Yes.

785. Does that require more witnesses?—It requires two witnesses, and in some cases it requires eye-witnesses.

786. Can any person in India in the criminal courts, that is, any native, be convicted on mere circumstantial evidence of any criminal offence, without direct testimony of the fact?—The Mahomedan code of law requires direct testimony of the fact.

787. Then the moolavie would not convict, he would not find a futwah against the prisoner, unless there were two witnesses to the fact?—They have a technical term, and they would find him guilty on presumptive evidence; he would state that in his futwah, but not guilty on direct evidence; that is, supposing the man were by circumstantial evidence found guilty of an offence that would involve death, he would state in his futwah that the extreme sentence was barred for want of a witness or direct testimony, but that he would be guilty on presumptive evidence.

788. That is, that he would be suspected?—No; his futwah would be "guilty."

789. He would be liable to punishment?—Yes, to the minor punishment.

790. Is there much difficulty in obtaining evidence, arising from the parties who might give the evidence being intimidated?—It did certainly exist to a great extent, but

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but it is fast decreasing. If you separate Bengal and the Western Provinces, it may exist in Bengal, it is known to; in the Western Provinces it is not by any means so frequent.

791. Has the crime of decoitee decreased?—Yes; it is a crime confined to one or two districts.

792. Is it to the improvement of the police you describe that decrease?—A great deal of it depends upon the settled state of the country, and likewise to the police.

793. How often are the sessions held in each district?—Half-yearly.

794. Are all the prisoners brought to trial?—They are all sent up for trial.

795. Are they all tried in each session?—They are all put on their trial, except there is something that makes them lie over, but the judge is obliged to dispose of the calendar and account for the prisoners in every case; the gaol is delivered. The law is, if a case stands over two calendars the prisoner is acquitted and set free. Before the system of commissioners of circuit, a man might be confined for a year before the sessions, the commissioner of the circuit never reaching the place: it ought to be half-yearly.

796. Under the present system is it the fact that the gaols are regularly delivered each half year?—I think, under the new system of commissioners, it is delivered twice within a twelvemonth. If they have a sessions this month, six months from this date there may be very few for trial.

797. But still they deliver twice a year?—It would be twice a year, though not six months apart.

798. They are delivered twice a year?—Yes.

799. You stated that the system of employing commissioners rather than judges going the circuit, has failed from the accession of the revenue duties?—Yes.

800. Does not that circumstance prevent the complete gaol delivery?—No; because another officer has been sent to hold the gaol delivery, and this proves the failure of the new system.

801. What description of person is he?—An officiating judge for the circuit to all intents and purposes; he has the same power as the commissioner of the circuit.

802. It is another qualified person?—Yes.

803. Do those commissioners of necessity possess a knowledge of the law when they are first appointed?—To answer that, I must go more into detail than the Committee may think it right to do.

804. Will you inform the Committee whether, in your opinion, the proper means for qualifying these Europeans and writers who are employed in judicial functions are sufficient; and if not, what other means you would recommend for securing the proper qualification and the proper execution of the administration of justice, generally?—I think that a writer who has been attached to the judicial branch, by the time he comes to the commissioner's office is qualified to perform the functions of a commissioner of circuit, but I doubt much whether he is qualified supposing that he has been brought up in the revenue branch and then made a commissioner of revenue and circuit, I doubt if he is qualified for the circuit, though he is fully qualified for the revenue; or *vice versâ*, a man who is brought up in the judicial branch is not qualified

qualified perhaps for revenue; but the appointment under the system as it now is, of the commissioner of revenue and circuit, was in this way: The government abolished the courts of circuit and the boards of revenue; they had numerically a sufficient number of men, and they divided the country out: there were three boards of revenue and five courts of circuit; they parcelled out the whole country into jurisdictions, each containing three or four zillahs, or districts, and government appointed a judge from a court of circuit to be a commissioner of revenue and circuit, and a district was placed under him, with the powers of the board of revenue and the commissioners of the circuit: so also an officer was taken from the revenue board and made him the same. It is no imputation on an individual to say he might not be qualified for one department; the first man in the service may be qualified in one line, though he may not be so competent in the other: it is upon that partly the system has failed.

805. So far as acquiring a knowledge of the natives goes, is not experience in the revenue department important?—I think that the judicial officer gains more insight, in the course of his service from a writer to the office of commissioner of circuit, in revenue matters, than a revenue officer does of the judicial, in rising from a writer to the board of revenue. As a civil judge he has to look over the revenue proceedings.

806. Have you any plan by which this mischief might be rectified?—The commissioners of circuits were an improvement on the old courts of circuit, by ensuring a half-yearly gaol delivery in each district, from giving them a space they could travel over within the period. In the Bareilly circuit the judge had to travel 1,200, or perhaps 2,000 miles in the half year with all his office; that was under the old regime; now he has not to travel more than 60 miles from a given centre. The new arrangement diminishes the sphere in each case, but it blends the functions of the judicial and the revenue departments. Had they given each six instead of three districts to superintend in one branch only, if a revenue officer had six instead of three, with the duties of circuit judge, confined only to revenue matters, the business would have been performed; that is, the improvement would have been substantial.

807. You would send the same officers on their circuit?—Let them be wholly distinct from each other; restrict the duties, and put one in the revenue and one in the judicial.

808. You would enlarge the spheres, and divide the duties?—Yes, I think it is wrong to give them both functions; a positive evil.

809. Are the natives ever employed as judges in criminal cases to any amount?—No.

810. Not as magistrates?—No.

811. Do you think it would be advisable to make natives justices of the peace?—Certainly not.

812. Do you mean that answer generally?—I mean that a native is not a qualified person to perform the duties of a justice of the peace.

813. Even over natives?—No, not beyond the present police jurisdiction and authority he possesses.

814. As

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814. As you say you would not employ natives as justices of the peace, do you think it would be safe to have a power of employing them to any limited extent at the presidencies in the functions of police?—It might do no harm; it would be inoperative. I think they are not yet capable.

815. Do you think the natives would of themselves have confidence in a native justice of the peace?—No, certainly not.

816. Do you think there would be any advantage in having some means of instructing these writers employed in the administration of justice, in the general principles of law, before they commence their judicial career?—I certainly think a man who knows something of law is much better qualified than one who knows nothing; but the local regulations are what he must know.

817. Do you think a person better qualified to discharge the judicial functions if he were grounded originally in the general principles of jurisprudence?—That is the object of Haileybury, supposing he attends to those lectures delivered there.

818. Has the instruction which he gets in the principles of law in Haileybury been found useful?—Yes, I think so; as far as it goes it is most useful.

819. Is it desirable to extend it?—I do not know how it could be extended, unless writers were kept longer in England.

820. Might you not by altering the course of study?—I myself went there. I do not think you could increase the study of law without decreasing something else; to keep within the present limit of residence in the College, you must take away something equally useful to learn, to give more time for the study of law.

821. And what is that?—I think a writer learns least of the languages. In my opinion, the three principal things a man learns at Haileybury are law, political economy, and history. Afterwards he has no opportunity in India of gaining similar information.

822. Would there be an advantage in excluding classical and mathematical instruction from Haileybury, and substituting many of these more available and practicable branches?—I do not think it desirable to exclude classics and mathematics.

823. Supposing a certain part of the youth destined for India should be intended for the judicial line, would it be advisable to prolong their stay in this country to enable them to acquire a knowledge of the principles of jurisprudence more perfectly than they do now?—It is difficult to tie a man down in this country to say what line he shall pursue in India. In my own case I should have conceived it would have been hard to tie me down in England, for it might have happened that there was another branch that I might have been more disposed to turn my mind to after I had seen India.

824. You are of opinion that the choice of the particular line in which he is to be employed cannot well be fixed until he gets to India?—Yes; and not till he is out of the Calcutta college; till he sees the country: he is sent up as assistant to a place there; he sees the nature of the business, and he may then fix himself to one branch.

825. It is pretty much left to the young men there to choose their own lines?—It is; but I fancy the exigency of the service often requires them to be sent. Formerly a man was appointed assistant to a judge and magistrate, which is wholly judicial,

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judicial, or he chose, and was sent as assistant to the collector, which is wholly revenue; now they are appointed as assistants to the commissioners of revenue and circuit, it remains for them then to be sent where they may be most wanted.

826. They are not now enabled to choose whether they will be in the revenue or judicial line?—Every young man on his emancipation is appointed now assistant in the revenue and judicial line; he is appointed assistant to the commissioner of revenue and circuit; and he is not appointed assistant to a magistrate or collector of a specified place, as he would have been formerly, but under a commissioner, who assigns him to any place within his jurisdiction.

827. Does he assign him after he has some knowledge of what he is fit for, having employed himself?—He assigns him as soon as he thinks him qualified; it is left entirely to him: sometimes he deputes him under a relation, for it is fair to conceive he would learn his duty better under a person interested in him.

828. Is he generallly employed in both departments?—Yes; alternate days usually.

829. How long upon an average would a young gentleman remain as an assistant before he would be appointed a commissioner?—I suppose 18 years, perhaps 20.

830. He would be assistant?—No; intermediately he may be a magistrate and collector, but before he becomes a commissioner he would see 18 years' service. A writer, after having passed the required examination at the college of Fort William, is first appointed (according to the present system) assistant to a commissioner of revenue and circuit, at whose disposal he is placed to be deputed or attached to any office (revenue or magisterial) where his service may be most required. Supposing him deputed to a magistrate's office, his prospect of rising in the service would be thus:

1st. Assistant to magistrate: On a salary from 400 to 600 rupees per month, for a period of near five years.

2d. Joint magistrate: On a salary of 800 to 1,000 rupees, for a period of three years.

3d. Magistrate: On a salary of 1,200 to 1,600 rupees, until he might be appointed judge of a *civil* court, and his *magisterial* functions would cease; from which he would

4th. (Commissioner) Rise to a commissioner, after 18 or 20 years.

It will be seen from this scale that an officer may be appointed a *judge* of a civil court without having gone through the training which he would have under the former system, which was thus:

Assistant to judge and magistrate;
Registrar and joint magistrate;
Judge and magistrate.

By the abolition of registrars (the intermediate step between assistant and judge), it is difficult to see how a man, whose time is fully occupied, can get that same degree of knowledge under the new system he might naturally have gained in the 10 or 12 years' *apprenticeship* before he attained the office of judge and magistrate, as far as *civil* judge is concerned. But suppose the commissioner to depute the assistant in the revenue department, he would become,

1st. Assistant to a collector, and wholly confined to revenue matters.

2d. Deputy

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2d. Deputy collector: Deputed to make settlements and assessments, and possibly created joint magistrate, with all the powers.

3d. Collector: In charge of a district in every particular relating to revenue.

4th. Commissioner: He would become a commissioner of revenue and circuit, after 18 or 20 years.

The powers vested by regulation in an assistant to a magistrate, are "to hear and determine any case *made over* specially for that purpose by the magistrate, and on proof and conviction to order a punishment not exceeding one month's imprisonment, or a fine not exceeding 50 rupees.

A magistrate, on conviction of certain offences, may punish with six months' imprisonment, with or without labour and irons, 30 stripes, and a fine not exceeding 200 rupees, commutation to imprisonment not exceeding six months. A magistrate, by Regulation XII. I think, of 1818, may on conviction of a burglary (and thefts exceeding 100 rupees in value) sentence to two years' imprisonment with labour; and by another Regulation, in cases of serious affrays, sentence to one year's imprisonment. In all cases of murder, homicide (or attempts), burglaries exceeding 100 rupees, woundings, administering drugs, child stealing, and other heinous offences, the magistrate must, in the event of there being sufficient evidence, commit the accused to take his trial before the commissioner of circuit, at the assize or session next to be holden.

831. Is the assistant ever employed in delivering the gaols?—Never.

832. What means has the assistant of learning the judicial part of his business?—He is generally appointed to be the assistant to a district; after having been a short time at the commissioner's office, he assigns him to a district, and in the office of that district he learns the routine of duty and gains experience.

833. But in the district to which he is appointed as assistant, what is the nature of the judicial functions he discharges?—In preparing cases and taking evidence.

834. What cases does he prepare?—Any the magistrate may send to him.

835. What is the nature of the preparation of a case; how does he prepare a case?—Much in the same way as a magistrate prepares a case before he commits it in this country.

836. Taking the depositions of witnesses?—Yes; and making the case as complete as he can, so that the magistrate may come to a decision upon it: the magistrate can send for more evidence and make further inquiry.

837. That is in the case of minor offences or commitments?—Of any case that may be sent to him.

838. Does he do so in cases of a graver description that are for trial?—Yes, he prepares it for trial; he passes no decision.

839. Are not all the cases of a graver description tried, and the depositions taken, before the commissioner of revenue himself?—Before the magistrate, in the magistrate's office, in the first instance; but the commissioner of circuit has the whole over again before himself and the moolavie. The commissioner is the superior authority in the district.

840. The commissioner is the judge of the circuit?—Yes.

841. And assists in the delivery of the gaols?—Yes; the judge of circuit only delivers the gaols.

842. Suppose

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842. Suppose a case of theft of a serious nature, would not that case be entirely heard from its commencement to its termination before the commissioner, at the time of trial?—Suppose a theft takes place in a district under 200 rupees in amount, the magistrate disposes of it entirely himself, even as to the punishment. Supposing it to be a heavy case he commits it for trial before the commissioner of circuit, who hears the case, and has all the witnesses before him, and takes it all down as a new trial.

843. When you speak of the preparation of a case by the assistant, you allude to a case below 100 rupees?—He prepares it for the opinion of the magistrate; the magistrate may say, this is a case which should go to the commissioner at the next circuit.

844. Is the preparation carried on by the assistant, having the witnesses in the same room, though the magistrate does not interfere?—Every evidence ought to be taken before the English functionary. The assistant takes evidence and tries to make the case as complete as he can before he sends it up to the magistrate, who goes over the case completely, although he does not take it again in writing; but if it goes to the commissioner of circuit the trial is taken down in writing *de novo* before the commissioner.

845. So that the instruction of the assistant is brought in actual contact with the persons?—He is the person who superintends the whole evidence.

846. Is it compatible with the judicial service that a young man should attend the court as a student; could that be made compatible with the practice in judicial courts?—No.

847. You say there is no opportunity in which he could be attending, his services being required immediately after college?—Yes.

848. Would he not be better qualified if he attended as barristers bringing up for the bar attend here?—If you make them barristers you deprive the natives of the office of pleaders.

849. But could you not give him an opportunity of acquiring a knowledge of the law by attending as a student?—I think he acquires it by the preparation of the cases and the taking of evidence.

850. You think that is better than attending as a student?—It is his own interest to get up the case as completely as if it was for his own decision; he is not fettered except by the law, which he must inquire into and study.

851. Does he not act sometimes himself in a judicial capacity as assistant to the judge?—Yes, in petty cases.

852. So that in fact he is to discharge the functions of a judge almost immediately on his leaving college?—In disputes in small cases.

853. At that time surely he cannot be qualified?—He cannot of himself hear a single case until it is sent from the magistrate; he cannot try any case, or look at the papers even, until it is made over regularly by the magistrate.

854. He may give a decision?—If he is ordered by the magistrate.

855. If the magistrate refers a case for his decision he can decide?—Yes; the responsibility of being able to do that rests with the magistrate; if it is made over to him by the magistrate for his decision he can decide it.

 856. You

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856. You assume that he would not make it over to him if he did not think him qualified?—When I was assistant I had not a case made over to me for six or eight months after I was in the office.

857. In what language are the depositions taken down?—In Persian.

858. Who does that?—A native writer.

859. What means has the assistant of knowing if they are correctly taken down?—By knowing the language.

860. But supposing he does not understand Persian?—He would not be out of the college. Persian is the language by which the assistant is qualified for the service: he has given into his hand a Persian paper, and he is to translate it into English, and an English paper which he is to translate into and write in Persian; he is supposed to be able to read and write after having done this.

861. You think him sufficiently qualified in his knowledge of Persian, in the first instance, to superintend the depositions?—Provided he has passed college, he knows it beforehand; a man the first time does not understand so much as he does by practice after.

862. Do they learn Persian at Haileybury?—Yes; that is one of the tests.

863. And he is examined in Persian before he leaves the College at Calcutta?—Yes. I do not mean that a man when he leaves college reads as fluently as he does after having been in an office for a year or two.

864. You have spoken of the magistrates; what description of persons are the magistrates?—The commissioner on circuit is much the same as the judge who goes of the assizes in England, and the magistrate is there much in the same way as a bench of magistrates at the petty sessions.

865. It is a class of civil service?—Yes: the first step from an assistant is to be a joint magistrate, he then has a portion of district over which there may be a magistrate; he then becomes magistrate, and from that he becomes a commissioner of circuit: the rise from an assistant to a commissioner is not without intermediate grades.

866. The commissioner, the magistrate and the assistant, are all engaged both in judicial and in revenue functions?—Not always; the magistrate is a distinct authority from the commissioner: the revenue duties are performed by the collectors, not by magistrates.

867. That is what you referred to when you said a young man chose what line he would take?—He rises to a magistrate, then he becomes a commissioner; ultimately he is not so well qualified to be a commissioner of revenue as a person who has risen from an assistant to a collector, and thence to a commissioner of revenue.

868. If he keeps to the revenue line his step is to be a collector?—Yes; those who have been totally confined to one branch cannot be so well qualified for the other.

869. Do you think an assistant is ever called upon to give a judicial opinion upon a question before he acquires sufficient experience to do so, that is, soon after leaving the college?—If he is called on for a decision it is not final; every decision is appealable to the magistrate, and every decision of the magistrate is appealable to the commissioner.

870. In

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870. In order to qualify himself for judicial duties he has to acquire a general knowledge of law, and also a knowledge of Mahomedan and Hindoo law?—The Mahomedan and Hindoo law (except in cases in which there is caste or anything of that kind) forms a very little part of judicial education; the regulations are the principal thing he must know; the regulations he is bound by his oath of office to conform to, and in their preparation the Hindoo and Mahomedan law were taken into consideration. The regulations are enforced, and they are the law of the land now; he is bound on his oath to administer justice by them.

871. That, then, is his only judicial study?—That is his only judicial study.

872. Are the commissioners at the present moment taken from the class of collectors and magistrates, either one or the other?—They have not been in existence above two years and a half; they then were taken from the boards of revenue as well as the courts of circuit; now, of course, they would be taken according to their standing. A man who would have been eligible to a court of circuit is eligible now to a commissioner of revenue and circuit, and he has the two functions, and if he is of standing in the service he is a commissioner of revenue and of the circuit.

873. He may be equally chosen from the classes of the magistrates or collectors?—The magistrate or the collector equally are steps to a commissionership.

874. Is not experience in the revenue department of some service to a man in adapting him to the judicial?—That is quite a party question. I think a man is a better judge if he knows the detail of revenue proceedings, the same as any man must be a better judge the more information he has. The powers of the magistrates at Madras and Bengal are not equal. It is a common mistake to suppose that the magistrates of Bengal and Madras have the same powers.

875. In what direction does the zillah judge rise?—It used to be assistant, then he was made registrar, and from that a judge, in which capacity he had no magisterial duties at all; no police.

876. To what does he arrive beyond that of being a judge of the zillah court?—He used to rise to the court of appeal.

877. Those provincial courts being removed, what is his next step?—The commissioner; every thing ends in the commissioner. In fact there is no distinction of lines such as used to prevail in the revenue and judicial departments; the union of these two is most prejudicial, in my opinion, in many respects.

878. What is the salary of a commissioner of the circuit?—Thirty-six thousand rupees, and 6,000 rupees for travelling allowance.

879. And what is that of the zillah judge?—Twenty-eight thousand rupees.

880. And of the magistrate?—From 1,000 to 1,600 rupees a month.

881. And of the assistant?—On quitting his college he gets 400 rupees a month, and he gets an increase of 100 rupees; two years after leaving college it is 400 or 500 rupees a month; on that he remains till he gets higher.

Lunæ, 16° *die Aprilis*, 1832.

The Right Hon. ROBERT GRANT in the Chair.

IV. JUDICIAL.

16 April 1832.

W. B. Bayley, Esq.

WILLIAM BUTTERWORTH BAYLEY, Esq. called in and examined.

882. WILL you give to the Committee any information as to the present state of the judicial establishments of the Company, or any suggestions as to the improvements in it which are required and practicable?—I have explained my sentiments on the administration of civil justice under the presidency of Bengal, in a minute recorded in November 1829; on that occasion I observed that the machinery of Lord Cornwallis's system for the administration of civil justice was from the very first inadequate to accomplish more than a small portion of the work it was expected to perform, and that it was soon found necessary to introduce various modifications in that system. The higher courts were from time to time relieved from details of minor importance, the powers of the inferior European courts were increased, the aid of the revenue officers and of assistant judges was called in, the jurisdiction of the native tribunals was largely though very gradually extended, objectionable forms were amended or dispensed with, and more summary processes were introduced, so that scarcely a year had passed since the promulgation of the code of 1793, in which attempts had not been made to remove the grounds of civil controversies, to expedite their adjustment or to reduce arrears of suits, which had nevertheless continued to accumulate. It was the principle of Lord Cornwallis's system to provide for the administration of civil as well as of criminal justice by the almost exclusive agency of European functionaries. The districts into which the country was parcelled out were far too extensive and too populous to be successfully superintended by the individuals to whose charge the judicial administration was entrusted; and where the population amounted, as it did in many instances, to upwards of a million, the duties required from the judge and magistrate were far beyond the powers of the most active and intelligent officer. The difficulties thus experienced have been since augmented in the degree in which the extension of trade and cultivation, the advance in the value of land and the progressive increase of population have multiplied the demands of the public on the time of the civil tribunals. It is obvious that we began by aiming at more than could possibly be accomplished; that the expectation of being able to carry on the administration of justice, civil and criminal, by European agency, was utterly fallacious; that no addition of numerical strength to the European portion of the judicial establishments, which the public finances can at present afford, will do more than yield a partial or temporary relief, and that we must necessarily look to the still more extended employment of natives (subject to European superintendence). The system when originally introduced in the year 1793, was ill calculated to encourage the formation of a class of natives qualified by their education and character to fill responsible situations in the administration of justice; they were employed

employed at first either in matters only of very inferior importance or under the immediate eye of the judges, but as the necessity of having recourse to their assistance became more and more obvious, the original principle was gradually departed from, and a body of native judicial officers has been formed who now exercise very considerable powers. At first they were entrusted only with the decision of suits for money to the extent of 50 rupees, but in the year 1803 a new class of officers, called Sudder Aumeens, was established. They were invested with power to determine claims referred to them for real and personal property to the amount of 100 rupees. In 1814 their powers and those of the Moonsiffs were increased, and their situations rendered in all respects more efficient and respectable. In 1821 they were still more enlarged, the jurisdiction of the Moonsiffs being extended to cases of 150 rupees, and of the Sudder Aumeens to cases of 500 rupees. In 1827 a regulation was passed, by which the Sudder Aumeens were under certain circumstances vested with power to try claims to the amount of 1,000 rupees; so that, as stated in a minute of one of the judges of the Sudder Dewanny Adawlut, nineteen-twentieths of the original suits instituted in the civil courts throughout the country are now determined by native judges. The most favourable testimony has been borne to their talents and assiduity by many of the authorities to whom they are subordinate, and in the districts where the inhabitants enjoy the benefit of a comparatively efficient administration of civil justice, it is ascribable in a very extensive degree to the instrumentality of those officers. The Sudder Aumeens are now generally men of experience and legal learning; they are assimilated in religion, manners, habits and customs with the people, and they are generally regarded with respect and confidence both by Europeans and natives. The Moonsiffs, where proper persons have been selected, are likewise found to be extremely serviceable, and are well fitted from the local position which they occupy, not only to render justice acceptable to the great body of the people, but to execute a variety of duties delegated to them in the interior of the districts by the superior tribunals. In order, however, to render them generally trustworthy and efficient, they should be placed on a better footing in respect to emolument. With our past experience, we have every reason to believe that if the Moonsiffs as well as the Sudder Aumeens meet with liberal and due encouragement, the agency of both may be safely employed to a much greater extent than it is at present in the administration of civil justice, and that in course of time they may be entrusted with the disposal in the first instance of all original suits now cognizable by the civil courts. But in considering the extent to which powers might at once be raised, I thought it desirable that they should not take cognizance of suits exceeding 5,000 rupees in value or amount. I ascribed much of the success which had attended our efforts to improve the character of our native officers to the caution with which we had proceeded; increased power was conferred upon them so soon as experience justified it, and in proportion to the confidence reposed in them by their fellow subjects. I proposed, therefore, 1st, That the Moonsiffs should be empowered to decide suits for money and other personal property to the amount of 300 rupees, without any restriction as to the period within which the cause of action might arise beyond that which is at present imposed by the regulations on the institution of suits in all other courts, and that they should be remunerated for their trouble to the extent of 100 rupees per mensem.

2dly, That

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2dly, That the present Sudder Aumeens should be empowered to decide generally all original cases referred to them, to the extent of 1,000 rupees, as well as cases in appeal from the Moonsiffs, on a monthly salary of 200 rupees, with an increase of 50 rupees for such as might hold the office of Moolavie or Pundit; and 3dly, That a superior class of Sudder Aumeens should be entertained for the trial and decision of civil suits between 1,000 and 5,000 rupees, and with powers to determine appeals from such decisions of the second class of Sudder Aumeens and Moonsiffs as might be referred to them for that purpose. I recommended that they should be selected from the law officers of the provincial courts, or that other individuals, of whatever class or religious persuasion, should be chosen, who might, in the opinion of government, on the joint report of the local commissioner and judge, be deemed qualified for the trust, and that they should receive a monthly allowance of not less than 500 sonat rupees. Such an arrangement, I observed, would provide for the disposal, through native agency, of the whole of the original suits regularly cognizable by the zillah and city courts up to 5,000 rupees. The appeals from the Moonsiffs would be referred to the ordinary Sudder Aumeens, and appeals from the ordinary Sudder Aumeens would in like manner be referred to the principal Sudder Aumeens, with a special appeal in both cases to the zillah or city judge. The latter officers would be at liberty to retain on their own files any suits they might think proper. It would be the special duty of the judge to superintend and regulate the proceedings of the native judges, reporting through the Sudder Dewanny Adawlut periodically the degree of estimation in which they might be held. I recommended that the summary jurisdiction with which the judges were invested in matters of rent should be transferred altogether to the collectors, whose decisions should be open to revision by the zillah and city judges on the institution of a regular suit, the parties still retaining the option of instituting a regular suit in the first instance in any court, instead of having recourse to summary process before the collector. I recommended the gradual abolition of the provincial courts, and that their jurisdiction should be transferred to the Sudder Dewanny Adawlut, which latter should be divided into two courts, one for the Lower, and one for the Upper Provinces. I observed, that unless a new Sudder Court were established in the Upper Provinces, or several new judges added to the old one in Calcutta, the provincial courts must be kept up, an arrangement which would in the end be attended with a much heavier cost, and was otherwise undesirable. To augment the numerical strength of the present Sudder Court would not produce a corresponding increase of efficiency, and the control of the judges over the remote districts of the Western Provinces would be exceedingly imperfect and unsatisfactory. I thought that the office of magistrate might continue united to that of judge, where the civil business of the district was so light as to admit of it; but feeling that the efficiency which the police had at length attained, compared with what it was twenty years ago, in promoting the security both of person and property, was perhaps the greatest blessing which the inhabitants yet enjoyed under the British Government, I did not desire to see the office of the magistrate generally united with that of the collector. I observed, that by several late regulations the criminal powers of the magistrates had been greatly increased, and their duties augmented, and that in many districts the heavy duties of the collector could not

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not be superadded without imminent danger to the public interests. In those provinces where the detailed settlement absorbed, and in the opinion of the best informed persons, would continue for very many years to absorb the attention of the collectors, and where they were in future, by a recent enactment, to undertake the investigation of almost every question which could arise relative to rights and interests connected with landed property, I could not contemplate the conjunction of the two offices in the same individual, without entertaining serious apprehensions, that as heretofore one or other department must suffer in the union. It appeared to me important, therefore, that separate magistrates should be appointed wherever practicable. The following memorandum exhibits, in a concise point of view, the nature and extent of the alterations which would be effected in the system by the measures proposed.

JUDICIAL ESTABLISHMENT.

Present System.	Proposed System.
1. *Moonsiffs* empowered to receive, try and determine suits preferred to them for money and other personal property not exceeding 150 sicca rupees, provided the cause of action shall have arisen within the period of three years previously to the institution of the suit.	Powers extended to 300 rupees, without any restriction in regard to the limitation of time beyond what is contained in the Regulations with reference to suits generally.
2. *Sudder Aumeens* authorized to determine original suits referred to them to the extent of 500, and specially 1,000, and to hear appeals from the decisions of the Moonsiffs.	Powers extended to 1,000 rupees generally, and appeals from the Moonsiffs as before.
3. *Registers* empowered to determine suits up to rupees 500, and specially to any extent referred from the judges' file, as well as appeals from the Moonsiffs and Sudder Aumeens.	Office of Registrar discontinued, and special Sudder Aumeens established for determining suits from 1,000 rupees to 5,000, and appeals from the ordinary Sudder Aumeens.
4. *Zillah and City Judges* empowered to determine suits to the amount or value of 10,000 rupees, and regular and special appeals from the Registrar and native functionaries.	Original jurisdiction restricted generally to suits the amount of which is not less than 5,000, and to the cognizance of appeals from the native judicial functionaries; jurisdiction in summary suits for rent transferred entirely to the collector.
5. *Provincial Courts* with original jurisdiction in all cases preferred to them, above the value of 5,000 rupees, and appeals regular and special from the Zillah and City Judges and Sudder Aumeens.	Provincial Courts to be abolished as soon as they shall have completed the business now depending before them.
6. *Court of Sudder Dewanny and Nizamut Adawlut,* consisting of five judges, a registrar, deputy, &c.	Two Sudder Courts, one for the Lower Provinces on the same establishment as before, and the other for the Western Provinces, to consist of three judges, one registrar, assistant, &c.

883. It is understood that the improvements proposed in the latter part of that minute have been in a considerable degree acted upon subsequently?—I have reason

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reason to know that it has been determined to establish a distinct court of Sudder Dewanny Adawlut and Nizamut Adawlut in the Western Provinces, to limit the original jurisdiction of the zillah and city judges to suits above 5,000 rupees in value, all suits below that amount being rendered cognizable by native judges. The salaries of the native judges have been fixed at different rates, some at 100 rupees a month, some at 150 rupees a month, some at 250 rupees a month, and some at 500 rupees a month. The provincial courts are gradually to be abolished as well as the office of registrar, and summary suits for rent are to be transferred to the collectors. In addition to those changes, it has been resolved to unite the offices of magistrate and collector, to confer police powers on tehsildars, to relieve the revenue commissioners from their duties as criminal judges, and to confide those duties to the zillah and city judges. The latter arrangements were not advocated by me; I do not concur in the expediency of generally uniting the offices of magistrate and collector, or of giving police power to the subordinate revenue officers, and I think that the zillah and city judges cannot perform the duties now executed by circuit judges, without precluding them from the effectual administration of civil justice.

884. Will you state what your objections are to the union of the functions of collectors and magistrates?—The objections are very fully stated in paragraphs 185 to 200 of a letter addressed to the Court of Directors by the government of Bengal, under date of the 22d of February 1827. The chief practical objection in my judgment is, that the collectors of the extensive districts in the ceded and conquered provinces, whose time is already entirely occupied by their other duties, and must continue to be so occupied till the formation of a permanent settlement of the land revenue, cannot adequately perform the additional functions of a magistrate and superintendent of police. The same objection may likewise be applied to several collectorships in the province of Benares and in the Lower Provinces. Other objections exist, but this is the principal one.

885. Do you think that on principle there is any objection to the union of the functions of justice with those of revenue?—I do; but the objection does not appear such as to prevent the arrangements where the officers may have leisure and capacity to undertake both duties. The objections to vesting tehsildars and other subordinate native officers of revenue with the power and functions of police officers, appear to me very serious, conceiving as I do that they would be more likely to abuse their authority even than the present class of police officers. My own opinion, as to the best mode of administering the internal affairs of our old established provinces is, that there should be a separate judge, a separate collector, and a separate magistrate in each district; this plan has been urged and recommended in paragraphs 201 to 208 of the letter addressed to the Court of Directors on the 22d of February 1827, to which I have already referred.

886. Will you suggest any improvements which occur to you in the system of administering civil justice?—I have no doubt that by degrees still more extensive powers may be safely vested in the native judges, and that in the course of time our European judicial officers ought to have no other share in the administration of civil justice than that of superintending the proceedings and hearing appeals from the native judges. At the same time I repeat, that much of our success in

qualifying

qualifying the natives for such trusts is owing to the manner in which those powers have been gradually conferred upon them. The native judges now decide about nineteen-twentieths of all the causes adjudicated by our civil courts; the delay in those cases does not on the average exceed seven or eight months from the first institution to the decision of the suit. In the remaining cases, which are of higher amount, the delay is undoubtedly great; but generally speaking, the delays of our courts are less injurious, in my opinion, than is supposed in this country. It is of course desirable to expedite the decision of all civil controversies as much as possible consistently with justice; and there are means, in my opinion, by which that object may be promoted. The heavy arrear of civil business in our European tribunals in the Lower Provinces is ascribable chiefly to the precipitation with which the permanent settlement was carried into effect, without sufficiently ascertaining and recording the rights and interests of the various classes of proprietors and cultivators of the soil in relation to each other and to the government. The arrears have been further augmented by growing confidence in our tribunals, by the increased value of land, the increased population, and the march of general prosperity and improvement.

887. When you speak of Europeans superintending the native courts, do you mean that they should be present?—No; I meant merely that they should control and watch over the processes of inferior tribunals, acting as an appellate court, as a court ready to correct errors, to prevent abuses, and to apply a prompt remedy to any evils which might arise.

888. Under such a control, and with a power of appeal hanging over them, you conceive the natives might be fit to carry on the functions of judicature without the presence of Europeans?—Yes, their character and capacity for judicial business is improving every day, but they must be sufficiently encouraged and rewarded. In this case I am persuaded they will prove very trust-worthy.

889. Do you conceive that in that respect in which the natives were unfit, namely moral character, they are improving?—Yes, in connexion with an improved education.

890. State why you conceive that the delay which you admit has taken place to some extent in the administration of civil justice is not so injurious as is occasionally supposed?—I think the delay originates in a great degree in the parties themselves, in both parties being frequently desirous of protracting the decision of the court: suits of large amount may generally be supposed to concern rich individuals, to whom the delay of even two or three years in the realization of a claim is of less importance than of a small amount to a poor man. In the latter class of cases, that is, in 19 out of 20 of the whole number, the delay does not appear very considerable.

891. Do you conceive that means might be taken for expediting the proceedings?—I think so.

892. What are those means?—By far the greatest part of the business in the zillah courts, and no inconsiderable portion of that in the criminal courts (of the Lower Provinces especially) originates in the want of Regulations explaining and recognizing the different tenures, and of records defining the relative rights, interests and duties of the proprietors, tenants and cultivators of the soil. I am persuaded

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that not more than one quarter of the business in our civil courts arises from claims or disputes unconnected with land. For the adjustment of mercantile disputes, debts and simple contracts, little more is required than the application of general principles of equity, regulated by a due regard to established usages and customs. What we chiefly want are accurate records and regulations, defining the rights and interests of the cultivators and proprietors of land, in relation to each other and to the government. An intelligible exposition of Hindoo and Mahomedan law would also be useful. It is true that the principles of the law of inheritance, and generally speaking the main branches of the civil law of the Mahomedans, are pretty well known, and do not very frequently give rise to conflicting or irreconcileable opinions amongst the Mahomedan lawyers. By the aid of precedents in cases decided by the Supreme Court and Sudder Dewanny Adawlut, the leading principles of the Mahomedan civil law might be embodied, and might be determined and recognized without difficulty. It is far otherwise, however, with the Hindoo law. On the most important questions connected with the Hindoo law of inheritance, adoption and gift, different commentators give different expositions, and not only pundits of different provinces, but those at the same place, will often give opposite bebustaks on the same question. Some of the most important questions of this description have been decided by the Sudder Dewanny Adawlut. Reports of the cases have been printed, which now form precedents for the guidance of the civil courts, and the Hindoo law may be considered therefore to be fixed as to the specific cases in point. In addition to those cases, the decisions of the Supreme Court in Calcutta, of the Supreme Court and Sudder Adawlut at Madras, and of the Recorder's Court and Court of Ultimate Appeal at Bombay, on questions of Hindoo law, would furnish other adjudicated precedents, some of which might be adopted and recognized as law. Still these cases would be far too few to serve as a solid basis for general legislation, and a long period must elapse before they would materially increase in number and value. To form a plain, practical and efficient code of laws for the administration of civil justice amongst the Hindoos, and perhaps the Mahomedans also, especially in relation to the most important heads, such as inheritance, adoption, dower, gift and some others, the plan suggested by Mr. Mill in his History of British India, appears to me the only one likely to be attended with success. The following extract will show what I mean: "In the first place, as the law, according to what we have already seen, is in a state in which it is to a great degree incapable of performing the offices of law, and must remain almost wholly impotent in a situation in which the deficiencies of law are not supplied by manners, let the law be reformed and put into that state in which alone it is adapted to answer the ends for which it is intended. Let the laws, whatever they may, for the security of existing rights, or the attainment of future advantages, be determined to be, receive what alone can bestow upon them a fixed or real existence; let them all be expressed in a written form of words, words as precise and accurate as it is possible to make them, and let them be published in a book." This is what is understood by a code; without such a code there can be no good administration of justice in such a state of things as that in India; there can, without it, be no such administration of justice as consists with any tolerable degree of human happiness or national prosperity. In providing this most important instrument of justice, no further

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further difficulty will be found than the application of the due measure of virtue and intelligence not to be looked for in the classes whose interests the vices of the law promote. Sir William Jones and others recognized the demand for a code of Indian law, but unhappily thought of no better expedient than that of employing some of the natives themselves, as if one of the most difficult tasks to which the human mind can be applied, a work to which the highest measure of European intelligence is not more than equal, could be expected to be tolerably performed by the unenlightened and perverted intellects of a few Indian pundits. With no sanction of reason could anything better be expected than that which was in reality produced, a disorderly compilation of loose, vague, stupid or unintelligible quotations and maxims, selected arbitrarily from books of law, books of devotion, and books of poetry, attended with a commentary which only adds to the mass of absurdity and darkness, a farrago by which nothing is defined, nothing established, and from which, in the distribution of justice, no assistance beyond the materials of a gross inference can for any purpose be derived. To apply the authority of religion, or any other authority than that of the government, to the establishment of law, is now unnecessary, because the great and multiplied changes which the English have made in all the interior regulations of society have already destroyed, in the minds of the natives, the association between the ideas of religion and the ideas of law. But at any time for combining the authority of religion with that of law, nothing more was required than what might still be advisable, namely, to associate the most celebrated of the pundits. For digesting the law into an accurate code, such men would be altogether unqualified; but they might lend their peculiar and local knowledge to him to whom the task is assigned, and they might easily and effectually annex the authority of religion to his definitions, by subjoining quotations from their sacred books, and declaring the words of the code to be the true interpretation of them. The law of the natives, and the minds of its interpreters, are equally pliant. The words to which any appeal can be made, as the words of the law, are so vague and so variable, that they can be accommodated to any meaning; and such is the eagerness of the pundits to raise themselves in the esteem of their masters, that they show the greatest desire to extract from the loose language of their sacred books whatever opinions they conceive to bear the greatest resemblance to theirs. It would require but little management to obtain the cordial co-operation of the doctors, both Moslem and Hindoo, in covering the whole field of law with accurate "definitions and provisions, giving security to all exisiting rights, and the most beneficial order to those which were yet to accrue." The difficulty of successfully executing a task of this nature is considerable. The public officer or officers employed upon it should be in possession of qualifications not ordinarily to be found in the same person, viz. a familiar acquaintance with the habits and feelings of the natives, an intimate knowledge of the Sanscrit language, some, if not a very extensive, acquaintance with the civil laws both of ancient Rome and of the nations of Europe, a clear and comprehensive judgment, and great industry. The promulgation of a code so concocted and supported by the opinion of the pundits and moolvies, as to its general correspondence, in its main features, with the doctrines of Hindoo and Mahomedan commentators, would not shock the prejudices of the natives, although it might be found in some instances to differ from the

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the construction commonly prevailing in some parts of the country, or amongst some tribes and sects, and in others even to be decidedly at variance with principles hitherto more generally recognized. The minute subdivision of real property, which both the Hindoo and Mahomedan laws of inheritance have a rapid and direct tendency to produce, is a very serious evil, and might be beneficially restrained. It might also be rendered imperative that all mutations and transfers of real property, all wills, deeds of dower, gift and adoption, should be recorded in registry-offices established on similar principles to the registry required by law in Scotland, Middlesex, and part of Yorkshire. Benamee transfers, or transfers in fictitious names of real property might be guarded against. With regard to Regulations which relate to particular branches of revenue, such as salt, opium, customs, stamps, coinage, or to the duties, powers and functions of different classes of our native officers, or to the forms of procedure in any particular department of the administration, the details of each subject might be consolidated and included in a distinct law, to which all subsequent rules or emendations might be annexed as a supplement. This has already been done in many instances in Bengal, and generally at Bombay. All or most of these measures would be beneficial; but they appear to me to be matters of much less importance than that of defining and recognizing the claims, rights and interests of the various classes of cultivators, farmers and proprietors of the land. To the want of such information is to be ascribed almost all our difficulties in the administration of civil justice, and the chief part of whatever distress and oppression prevails in the Lower Provinces.

893. Would it not be possible to make provision in any code for the various customs of different districts?—Certainly. I do not of course propose that there should be one code for the whole of India, or for all the provinces under one presidency; but by supplying the defect which I stated of the want of records, by defining the rights and tenures of the cultivators of the soil, and the different classes of tenantry, we should do more to diminish the mass of civil business, than by any other measure which occurs to me.

894. Notwithstanding our administration of civil justice has been defective, do you think it has been sufficiently good to attract the confidence of the natives in general?—I do. Their confidence in the European courts proceeds no doubt from their opinion of our greater integrity, and the superiority of our moral character; but if the natives had the same advantages in those respects, I should consider them infinitely better qualified for the administration of justice in India than any European possibly can be.

895. Do you conceive that the natives would become qualified for the situation of justices of the peace?—I feel more hesitation in giving an opinion as to their fitness at present to exercise the powers of a magistrate, but I see no reason why by degrees they should not be entrusted with duties of the nature alluded to. They are already empowered to take cognizance of, and to punish for petty offences.

896. Would there be an objection to render them eligible to be justices of the peace, at least at the presidencies, leaving it to the local government to select individuals who might be qualified to discharge the duties of the office?—Under the vigilant superintendence of an European officer, the experiment might be tried without material danger, but I do not think they could yet be trusted

trusted with extensive magisterial functions, especially at a distance from European superintendence.

897. Are there any defects in the laws on any particular subject which you think require to be removed?—I think it desirable that the laws on the subject of usury should be modified or abolished. Our laws with regard to interest are, that claims upon bonds, &c. stipulating for more than 12 per cent. are void so far as regards the interest; a plaintiff cannot obtain a judgment for interest in such cases, though if the rate of interest has been openly stated on the face of the document, however much it may exceed the legal rate, our courts can give judgment for the principal; if, on the contrary, there be any attempt to elude the law, by a deduction from the loan, or by other disguise, neither principal nor interest can be recovered in our courts. In lieu of this law, I would leave parties at liberty to fix their own terms, without any restraint whatever.

898. You would have the rate of interest wholly unregulated by law, and that that particular agreement should be vitiated as others would be, only by fraud?—Just so.

899. The rate of interest is now much below 12 per cent., is it not?—Among respectable bankers and European traders in large towns, the rate of interest is much below 12 per cent., but in small dealings in the interior among the natives, it is much larger; 24 and 30 per cent. is not at all unusual. The borrowers pay, of course, for the risk which is run by the lenders in violating the law. Another measure which would facilitate the administration of justice has been already adverted to; I mean the registry of deeds in the manner long practised in Scotland. The process also in cases of bond debts, and of other claims on written documents, might be materially simplified, and the decision of such cases greatly expedited. We might limit the minute subdivision of landed property which now prevails to an injurious extent both amongst Hindoos and Mahomedans. Lastly, I would say that every effort should be made to raise the standard of qualification of European judges, as well as of native judges.

900. In what manner do you conceive that the qualifications of the native judges may be raised?—By suitable salaries and a more perfect education. Integrity is in one sense a purchaseable article, and by paying the natives whom we employ more liberally, we shall have a much better chance of securing that qualification in which they are most deficient. By the process of an improved education we are now raising up men infinitely better fitted by their knowledge for the discharge of judicial and other duties than the country has yet furnished.

901. Would the increased emolument have the effect of merely improving those who would otherwise attain those situations, or be candidates for them, or do you think it would be the means of attracting into the profession men of a higher caste?—It would sometimes perhaps attract men of higher rank, and possessing better qualifications, and the enjoyment of an office of considerable emolument would generally render the temptation to be corrupt much less powerful, and would make men careful to avoid the hazard of the loss of their offices by misconduct.

902. With regard to the qualifications of the Europeans who are to exercise judicial functions, what means would you suggest for the improvement of those?—By a more careful selection in England of the individuals who are destined for the civil

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civil service generally, and in India by a selection of the very ablest and most competent of those civil servants for judicial offices.

903. Are not the fittest persons selected in India for judicial situations, generally speaking?—For the higher offices I think they are, but not always for the situation of zillah and city judges. I think that latterly the feeling has been towards appointing the ablest men to the revenue department, the duties of which are indeed highly important, particularly in the Western Provinces.

904. What effect has the institution at Haileybury had with regard to the qualifications of the writers, as evinced in India?—Speaking from a general recollection of the young men of my own standing, and of those who subsequently came out before the College at Haileybury existed, I should say that I have not observed any very material improvement from the education of Haileybury. Better qualified persons for the civil service in India might be obtained by appointing to Haileybury two or even three individuals for every one individual who is ultimately destined for the civil service in India, so that out of 20 or 30 men the 10 best should be selected. It is in vain to deny the fact, that very unfit men have occasionally gone out as civil servants to India. Another suggestion which I have heard is, that officers for civil duties in India should be selected from the general body of military officers in the Honourable Company's service, after they shall have been for a considerable time employed in the country, and their qualifications, talents and capacity shall have been fully developed and ascertained.

905. According to that scheme, all those who are to serve the Company would go out as officers in the army, and be eligible afterwards for civil situations?—Yes; the prize would be so valuable that it would induce a great number of the young officers to study the languages, and to conduct themselves with propriety, and generally to qualify themselves for situations in the civil service; the only danger would be, that undue influence might be used in the selection of the individuals.

906. Would not there be a danger of raising discontent in the army on the part of those not selected?—That danger certainly would exist in some degree; but the same objection may be urged against a selection of officers from the whole body of the army for staff situations, not merely of a strictly military nature, but of a civil nature. Several military men are employed in the political department, and in charge of districts as collectors and magistrates.

907. Would you recommend the adoption of the plans you have proposed; or do you merely suggest them for consideration?—I merely allude to them as deserving consideration, not having formed any very decided opinion upon the subject myself.

908. Recurring to the questions of qualification to be acquired in England by writers going to India, do you conceive that means should be taken of giving a full education in the principles of law to the writers, or some of them; or would it be proper that the selection of European servants for the judicial or other situations should be made only in India?—I am of opinion that it would be desirable that the education of young men destined for the civil service in India should be carried to a greater extent than it is at present in England; that they should not go out to India much before the age of 21 or 22; that they should have every possible advantage

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advantage of general education in England, without any of their time being sacrificed, as I think it is sacrificed, to the study of native languages; and that the selection ultimately for judicial offices should be made exclusively in India: but I would give, if possible, to those young men who in India make choice of or are selected for the judicial department, special opportunities of attending the superior courts of justice, both the Supreme Court and the Sudder Dewanny Adawlut. Instruction in the general principles of civil law and the laws of evidence would be useful; but I would say, that no one can be well qualified for a judicial office in India without going through some of the details of the revenue department in the interior of the country, as giving them the opportunities of becoming familiarly acquainted with the language, the people, and the usages of the country, and with questions most frequently litigated in our courts of justice.

909. On the supposition that a young man, in the course of education in this country, showed any particular aptitude or inclination for some specific branch of study, do you see any objection to allowing his proving his qualification to go out, by his superior eminence in that department, without exacting from him an average share of qualification in other departments?—I am aware of no objection, provided his general character and past conduct be also satisfactory. A habit of dissipation and extravagance should be a complete disqualification for the service; it has, in individual instances, proved very injurious to the administration of India; and that is one motive for recommending that civil servants should leave England at a later period of life than they do at present.

910. Have the young writers arriving in Calcutta had opportunities of dissipation and temptations to it, which under a better system might be avoided?—There can be no doubt that the collection together of a number of young men in a place like Calcutta, which affords great facilities for dissipation, has led to much extravagance and much injury to individuals and the public; but of late years, during the administration of Lord William Bentinck, the mischiefs arising from that cause have, in my opinion, been materially diminished, so as not now to form any solid ground of objection to the College in Calcutta. Under the present vigilant superintendence, no young man who is either in a slight degree dissipated or habitually neglectful of his collegiate studies, is permitted to remain in Calcutta, but is immediately removed to a station in the interior of the country, and placed under the eye of some respectable civil servant. Those who do remain in Calcutta, who have no such tendency to dissipation, possess great facilities, by the establishment of the College of Fort William, for the acquisition of the native languages, and the period employed in acquiring those languages is very much shortened in consequence.

911. Do you think that a young man going out so late as 21 or 22 would be able to acquire the native languages sufficiently for the purposes of judicature?—I have no doubt that the acquisition of the languages would be rendered more difficult by the difference of age, but I see nothing to prevent a man at the age of 21 or 22 from acquiring the native languages with sufficient accuracy to transact those duties which would eventually devolve upon him.

912. If a writer does not go out till 21, might he not previously acquire some acquaintance with the rudiments of the languages, without its interfering with his general acquirements?—He certainly could do so; I have known individual instances

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stances of men coming out to India well acquainted with the Persian language, who have had no other instruction than that which England afforded to them; but there are so many more facilities for acquiring the languages on the spot, that it is almost a waste of time to study them in England. That time might be devoted to more important studies.

913. Do you think a person arriving there at 22 could acquire the language so as to hold familiar conversation and communication with the natives in their own language?—I see no reason why he should not; the organs of utterance are certainly not so flexible at a more advanced age, and probably he will not speak, as he would by learning at an earlier age, quite so idiomatically or with so perfect a pronunciation, as he would if he learnt the language on the spot at an earlier age.

914. You think it is not at all an insuperable obstacle?—I think it is not.

915. Will you state what is your opinion as to the efficiency of the present system of criminal justice established in the Company's courts; can you suggest any improvement in it?—I entertain, upon the whole, a very favourable opinion of the manner in which criminal justice is administered in the interior of the Company's provinces in the Bengal Presidency; our criminal laws are mild in the degree of punishment they award; prisoners are brought to trial without any great delay; abundant care is taken to guard against their being convicted unjustly; and, upon the whole, I think the system works very well. I am possessed of a memorandum intended to show the operation of the criminal laws and the state of crime under the Bengal Presidency. The Memorandum in question, with the Tables annexed, were prepared by the late lamented and very intelligent public officer, Mr. Edward Strachey, who sent them to me not long before his death. It was his intention to have submitted them to the Committee, as containing a full and satisfactory view of the operation of the criminal laws as administered in Bengal. The Memorandum commences with a short explanation of the system of police and criminal judicature established in the Lower and Western Provinces, explaining the powers and authorities exercised by the magistrates, the judges of circuit, and the Nizamut Adawlut. The Tables exhibit a list of the most heinous crimes ascertained to have been committed in the Lower and Western Provinces of Bengal for a series of years, the number of commitments and convictions in the criminal courts, with the punishments to which those convicted were sentenced. The results are afterwards compared with the convictions and punishments in England and Wales, in Ireland, and in several countries in Continental Europe.

[*The witness delivered in the same, which was read.* *See p.* 126.]

Of late years the punishments formerly applicable to crimes of different denominations have been very much mitigated in severity; extraordinary care is paid to the comfort and health of the prisoners confined in our gaols; our police officers have been furnished with a manual of instructions (Regulation XX. 1817), which I conceive to be valuable in themselves, and to have operated to prevent in a considerable degree abuses which formerly were prevalent among the police officers; and, generally speaking, the whole system of police and administration of criminal justice has greatly improved of late years, and is in practice very efficient. I am of opinion that the use of oaths in our courts of justice might be abandoned without

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out injury, if not with advantage; the great cause of failure in the administration of criminal as well as of civil justice is the habitual disregard for truth, which unhappily pervades the bulk of the native community, and the little security which the obligation of an oath adds to the testimony of witnesses. I do not believe that this characteristic vice of the natives of India has been fostered or increased by the establishment of our courts of justice, as is generally imagined; the same vice has been found to prevail to at least an equal extent in Mysore, in the Mahratta country, and in other parts of India, to which our authority has not extended, and where our institutions were totally unknown; false testimony has, in certain cases, been directly encouraged and approved by the sanction of the great lawgiver of the Hindoos; the offence of perjury can be expiated by very simple penances, and the inhabitants of India generally must undergo a great moral regeneration before the evil which saps the very foundations of justice, and bars all confidence between man and man, shall be effectually remedied. My own impression is, that, generally speaking, the moral sanction of an oath does not, especially among the lower classes, materially add to the value of native testimony; that the only practical restraint on perjury, is dread of the punishment prescribed by law for that offence, and that the fear of consequences in a future state, or the apprehended loss of character and reputation amongst their countrymen, has little effect in securing true and honest testimony on the part of those who may be influenced by the bias of fear, favour or affection. I think the experiment of dispensing with oaths in civil and criminal cases of minor importance might be tried in the first instance, and afterwards extended, if it succeeded, to cases of higher importance. Already persons of respectability are exempted from taking an oath in our courts of justice on signing a solemn declaration, prescribed by the Regulations. Retrospective oaths are no longer taken by the law officers of our civil and criminal courts; and the ministerial native officer of the courts of judicature, and other native officers employed in the judicial or revenue departments, or in any public office whatsoever, are no longer compelled to take and subscribe an oath previously to entering upon the discharge of the duties of the office, but are now required only to subscribe a solemn declaration to the same effect. Every effort has been made by the government to promote a knowledge of our laws, by publishing, both in the English and native languages, abstracts and digests of them, as well as precedents of cases decided by the highest tribunals, and by instructing those natives who are destined for public situations in the principles of our judicial administration, as far as it can be done in the colleges and seminaries established by government. The progress of education in India within the last six or eight years, has been very rapid; and if funds could be afforded, a much larger supply of native officers, fitted for the administration of the affairs of the country, might be furnished. I do not think that there is any chance of the English language being introduced generally, or being made a substitute for the Persian language in our courts of justice; it might indeed be brought into use by degrees in the districts immediately proximate to Calcutta, but even then I should doubt the advantage or utility of a change.

916. Is the evidence of witnesses who do not understand Persian, put down in the Persian language, and in that only?—Every witness has the option of having his evidence taken down in Persian, or in the language or dialect with which he is most

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most familiar, and in Bengal, I believe it to be the general practice to take down and record the evidence of the Hindoo natives of Bengal in the Bengalese language. Mahomedans, who speak the Hindostanee language, generally have their evidence taken down in Persian; the Hindostanee language having no proper character of its own, and Persian being understood by every Mahomedan of education. In the Western Provinces the dialects are various, and the Naguree character cannot be written very rapidly. On these accounts the evidence is, I believe, generally recorded in the Persian language.

917. You have stated your opinion as to the present state of civil and criminal justice in the courts of Bengal, and have suggested some improvements. On the supposition that there was an increased number of Europeans, either as settlers or as mere residents in the interior of the country, do you conceive that the present courts, or generally the present judicial system of the country, could remain, or that the improvements to which you have adverted could be in that case successfully introduced?—My answer to that question would be guided a good deal by the number of Englishmen likely to proceed to India. If the number were small, I should not consider any changes exclusively for the benefit of those few individuals necessary; if the number, on the contrary, was very considerable, and if it were designed to encourage the influx of Englishmen into the interior of India, then undoubtedly some changes would be desirable; but whatever changes are effected, if they are really improvements, should be shared by the natives in an equal degree with Englishmen. I think that we ought not to legislate with a special regard for Englishmen, and that the natives have a superior claim to consideration in questions of improving our system for the administration of justice in India. At the present moment foreign Europeans, Frenchmen, Dutchmen and Germans, of whom there are many individuals in the interior of our provinces, are subject to our laws and tribunals, civil and criminal, on precisely the same footing as the natives of India, and I have never heard of any serious complaints upon that point; at the same time, whatever improvements in the laws themselves or their administration may be desirable, should I think be left to the local administration in India, and should not emanate, except as regards general principles, from England. If the Parliament of Great Britain could be satisfied with leaving the legislative powers in the hands of the Governor-General and Council exclusively in India, I should prefer that to a Legislative Council; but if, as is perhaps to be expected, such should not be considered desirable, I see no objection to the plan proposed in Bengal of establishing a Legislative Council, comprising the judges of the Supreme Court and the members of government; nor should I see any objection to the admission of other persons into the Council, provided they were to be selected by the government in India, with the approbation of the home authorities.

918. If increased facilities were given to the entrance of Europeans into the interior of the country, and to their residence and settlement, do you think that a materially increased number of British subjects would be found to avail themselves of such facilities?—My impression is, that very exaggerated notions are entertained in England both of the advantages and disadvantages likely to result from affording increased facilities to the admission of British subjects into the interior of India.

I do

I do not think there would be any great influx of Englishmen, under any advantages which could be held out to them in India, or that they would bring any great accession of capital to that already existing there; and I do not, therefore, anticipate either any large benefits or any considerable injury from such a change in the present system.

919. What are your particular reasons for supposing there might not be a considerable influx of Europeans into India, if there were unlimited powers given to them to resort thither?—I think that of late years those who were desirous of settling there have had little or no difficulty in doing so. The government of Bengal has rarely, if ever, refused the application (however contrary to law) of individuals who wished to go into the interior of the country; and the Board of Control have, I believe, granted permission in instances in which it had been refused by the Court of Directors. My opinion that no capital will be brought from England into India arises from little or none having been brought hitherto, even at periods when interest has been at a much higher rate than it now is.

920. Do you think more capital would not go to India if the restriction on Europeans resorting to India was altogether taken away?—I do not think that capital would be sent from England, but I think that capital which would be otherwise remitted to England would probably remain in India.

921. Do you not think that Europeans without capital, persons of broken fortunes and character, might be tempted to go out as adventurers?—That is a mischief to be apprehended; but I think that they would fail of success there, and that their residence would be of short duration.

922. Might they not in the meantime create disturbance in the interior of India, if they were allowed indiscriminately to go there?—I think if there were no power vested in government to remove them that would be the case.

923. You think that a discretionary power ought to be vested in the government of India to remove Europeans who disturbed the peace of the country?—I would say, it is not necessary to remove them from India, but that a discretionary power should be vested in the government of removing them from the interior of the country to the presidency. I think that permission should be obtained by individuals wishing to go from Calcutta into the interior, and that the government should have the power of removing individuals grossly misconducting themselves from the country to the presidency; Europeans might be guilty of violent, insulting and offensive conduct, which though not perhaps punishable by law, might be extremely irritating and distressing to the natives.

924. You think that might answer the purpose without the power of deportation?—Yes, I think that the latter would then be unnecessary. So long as the government could remove them from the interior to Calcutta, the chief cause of danger would cease.

925. Supposing, for argument sake, an increased number of Europeans in the interior of the country subject to provincial judicature, do you think it would be possible in that case to extend the powers of employment of natives as judges in the provincial courts in the manner contemplated by some of your previous answers?—I think that under no circumstances would an Englishman residing in the interior

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of the country like to be subjected to the jurisdiction of a native judge either civil or criminal.

926. Do you think it advisable that he should be?—I cannot say that I do; unless the number of Europeans were great, I see no reason why an European judge should not be associated with a native judge in the cognizance of the few cases where Europeans were parties, the other parties being natives.

927. How far are foreign Europeans who reside in the interior of the country subject to the jurisdiction of the Company's courts?—In criminal cases they are subject like the natives to the jurisdiction of the Magistrates' Court, the Court of Circuit and the Nizamut Adawlut, all of which are superintended by British European subjects, and are not liable to be sentenced to punishment by a native. The only natives who are vested in any degree with the administration of criminal justice are the Sudder Aumeens, to whom petty cases are referred, assaults and trespasses and petty thefts and slight misdemeanors, at the discretion of the magistrate. In such cases they can award a judgment of imprisonment not exceeding fifteen days, and a small fine, but not corporeal punishment.

928. May those judgments be carried into effect without the authority of the magistrate?—The parties have a right to appeal to the magistrate from them, but if there is no appeal they are carried into effect.

929. Would Europeans, not British subjects, be subjected to those persons?—If the magistrate chose to refer the case to them they would, but that has rarely, if ever, been done, and I think it would be generally considered objectionable. In civil cases, a foreign European would have his claim decided precisely in the same manner as the natives themselves.

930. Has the circumstance of a foreigner, being subject in civil cases to the jurisdiction of the country courts, been found to operate as an obstacle to foreign Europeans settling or residing in those districts?—No, I do not think that their being subject to those courts has operated in the slightest degree to prevent their settling in India. Generally speaking, I should say the magistrate would not refer the cases of foreign Europeans to native judges, but would rather retain them on his own file, and this not from consideration to the European, but to the native judge himself; the danger being, in my opinion, that the native judge would either from fear or other motive be inclined to do more for the European or British subject than for the native.

931. Do you think that the employment of the natives in the administration of civil justice in India beyond that you have mentioned, would be satisfactory to the natives themselves?—I think that the natives employed as judges will, if properly treated and remunerated, merit and receive increased confidence from their countrymen as well as from Europeans, and this in the administration of criminal as well as of civil justice.

932. Can you give the Committee any information with respect to the costs of suit in the country courts of Bengal?—The amount of the expense to which the parties are subjected in the adjudication of cases in our civil courts in the interior of the country, has, I think, been misunderstood; the costs incurred by both parties in civil suits cognizable in the courts of Moonsiffs and Sudder Aumeens, which vary in their value from 10 to 500 rupees, or from 1 *l.* to 50 *l.* sterling, including

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cluding the expense of both parties from the commencement to the conclusion of the suit, amount on an average to 22 per cent. In suits from 500 to 5,000 rupees, or in those ordinarily cognizable by the Zillah Judges, the costs to both parties, as above explained, average about 16 per cent. of the value of the thing litigated. In the class of suits tried by the Provincial Judges, the expense is, on the average proportion, nine per cent. In suits cognizable by the Sudder Dewanny Adawlut, about six per cent. Those results were founded on official inquiries made in the year 1818; they include all authorized costs and expenses of every description charged to both plaintiff and defendant, the institution fee, the fees on exhibits and processes of all kinds, stamps, paper, pleader's fees, allowances to witnesses, &c. The amount is charged in the decree to the plaintiff or to the defendant, or divided between the parties, according to the nature of the decision. The expense, considerable as it appears in cases below 500 rupees, is not heavy, when compared with that incurred by litigants in courts of law or equity in England in contested claims to a similar amount.

933. If a suit goes through all its stages, the per-centage must be added in each court?—Yes; but in appeals the expense of taking fresh evidence is rarely incurred, and the pleadings are much shorter.

934. Are you favourable to the mode of trying by punchayet?—The subject of the punchayet has been very fully discussed in paragraphs 33 to 72 of a Despatch, dated 22d February 1827, from the Bengal Government to the Court of Directors. That Despatch contains a general review of the judicial administration, civil and criminal, under the Presidency of Bengal; and I beg leave to refer to it for my sentiments generally on the actual state, and the means of improving our judicial system.

See Appendix.

I am adverse to the introduction of punchayets as a formal and legalized part of our system for the settlement of claims to real or personal property, but as an institution for regulating questions of caste and religious discipline, of alleged breaches of the conventional rules or bye-laws of trades, professions, societies or classes of people united for civil or religious purposes, I consider the punchayet to be highly useful; it exercises a species of jurisdiction for which our tribunals are particularly ill qualified, and it is very important that the jurisdiction should remain as long as possible with those to whom it is confided by the voluntary acquiescence and submission of the parties most deeply interested.

It is a subject of regret that the natives can rarely be prevailed upon to submit ordinary civil controversies to the adjustment of a punchayet by arbitration.

Every European judge urges and encourages parties in suits before him to adopt this course, but with very little success. I may observe, that the Bombay Regulations authorize the European judges presiding over civil or criminal courts to seek assistance, whenever they may desire it, from respectable natives, by employing them as assessors; but without allowing their opinion to bind or control the final decision of the judge.

I think that a similar rule might be adopted with advantage in the courts under the Bengal Presidency.

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TABLES intended to show the Operation of the CRIMINAL LAWS and the State of CRIME in BENGAL; referred to in the Evidence of *W. B. Bayley*, Esq., p. 120.

REMARKS.

THE countries here referred to are not the whole territory under the Bengal government, but that part of it only (called the Lower and Western Provinces) which is subject to the General Regulations.

Some explanation of the system of police and criminal judicature established in those countries is necessary before the Tables are particularly noticed.

The police jurisdictions under darogahs were originally intended to include spaces of about 20 miles square, but they are of greater or less extent as circumstances require. There are from 15 to 20 thannahs or darogahs' stations in a zillah, the total number being in the Lower Provinces near 500, and in the Western near 400. At each station under the darogah are a mohurer or writer, and a jemadar, with from 20 to 50 burkundauzes, peons, or irregular soldiers. It is not to be understood that the whole business of the police is performed by these establishments. The zemindars or their agents, or other local officers or servants under them, are required to give immediate information at the principal police station of all crimes committed within their limits, and the duty of tracing and apprehending criminals is chiefly performed by the village officers or servants under the occasional direction and supervision of some person from the thannah.

The darogahs report their proceedings regularly to the magistrate, and receive orders from him. Their principal duties are to receive criminal charges, to hold inquests, to forward accused persons with their prosecutors and witnesses to the magistrate, and generally to perform such acts as the regulations prescribe with a view to the discovery, apprehension and ultimate trial of offenders. The darogahs are prohibited from taking cognizance of charges for adultery, fornication, calumny, abusive language, slight trespass, and inconsiderable assaults; persons who prefer such complaints are to be referred to the magistrate.

The magistrate's duty is to apprehend all disturbers of the peace and persons charged before him with crimes and misdemeanors; he is authorized to try complaints for certain offences, and to punish to a certain extent. In other cases he commits offenders to be tried before the Court of Circuit. In cases of burglary, theft or other depredations not amounting to robbery by open violence, and of affrays unattended with aggravating circumstances, the magistrates are empowered to inflict punishment as far as two years' imprisonment, with hard labour and stripes with a rattan. For other offences the magistrates are empowered to punish as far as imprisonment for one year, or fine not exceeding 200 rupees. The crimes for which magistrates are authorized to inflict these punishments are in the regulations only, referred to generally in these words: "In all cases of conviction before them of any criminal offence punishable by the Mahomedan law and the Regulations,"* magistrates' assistants, when specially authorized by government, are empowered to punish to the extent of imprisonment for a year, or 200 rupees fine; and in cases of theft, 30 stripes with a rattan. Assistants not vested with special powers are authorized to punish in various cases of petty offences to the extent of 15 days' imprisonment, and a fine of 50 rupees, commutable,

* The Regulations, however, do not specify what those offences are which are punishable by the Mahomedan law, nor do they require that any reference should be made by the magistrate to a Mahomedan law officer, as in the Court of Circuit; and the offences declared by the Regulations to be punishable by the magistrates are spoken of merely as petty offences; such as abusive language, calumny, inconsiderable assaults, or affrays and petty thefts.

mutable, if the fine be not paid, to 15 days further imprisonment; and in cases of petty theft, to the extent of 30 stripes with a rattan, and a month's imprisonment. The Hindoo or Mahomedan law officers of the Zillah Courts also are empowered to try petty cases referred to them by the magistrates, and to inflict punishment to the extent allowed to assistants not vested with special powers. There were in 1825, in the Lower and Western Provinces, including Cuttack, 63 stations of magistrates and joint magistrates.

The Courts of Circuit, before the changes introduced in 1829, consisted each of four or more judges, with two Mahomedan law officers. There were four of these tribunals at principal stations in the Lower Provinces, and two in the Western. When the judges were on circuit, one of them, with a law officer as an assessor, formed a court, and held half-yearly sessions and gaol deliveries at each station, the judges going in rotation within their own divisions. Before this court all prisoners committed or held to bail by the magistrate were tried. The number of stations of magistrate and joint magistrates visited by them, were 29 in the Lower Provinces, and 21 in the Western. The duties of the circuit are in future to be performed by a commissioner; but the rules for the conduct of this officer as a judge of circuit are generally the same as the old ones. When the proceedings on a trial are closed, the law officer gives his futwa, or law exposition on the case. If the futwa acquit the prisoner, the judge, if he concur in the acquittal, orders the prisoner to be released. If the futwa declare the prisoner guilty, the judge, if he concur, and is empowered by the Regulations to pass final sentence in the case, passes sentence accordingly. If he disapprove the futwa, or is not authorized to pass a final sentence, he refers the proceedings to the Nizamut Adawlut. The judge of circuit is competent, in certain cases, to pass sentence to the extent of 14 years' imprisonment, and corporeal punishment. If the prisoner be liable to perpetual imprisonment, or the punishment of death, the proceedings are sent to the Nizamut Adawlut; in the former case sentence is passed by the judge of circuit, but it requires the confirmation of the Nizamut Adawlut, and in the latter he does not pass sentence. The Mahomedan law (notwithstanding the futwa) is not always the guide of the circuit judge, it is modified by many enactments of the Regulations, and it is according to the Regulations, and not, strictly speaking, according to the Mahomedan law that criminal justice is administered in the Courts of Circuit. These courts are bound to conduct their proceedings under prescribed rules. They are, moreover, vested with powers of superintendence and control over the magistrates within their respective divisions. They can call for the magistrate's proceedings, and pass such orders on them as they think proper. The judges on circuit, after their half-year goal deliveries at every zillah station, make a report to the Nizamut Adawlut, comprising an account of all such matters as they deem of importance to communicate relating to the police and administration of criminal justice in each zillah, with any propositions for improvement which they may think fit to make, and the Nizamut Adawlut forward the reports with their comments to Government.

The Nizamut Adawlut, or superior criminal court stationed at Calcutta, has for some years past consisted of five judges, with a sufficient number of law officers. By this court orders or sentences are passed on trials referred to them by the Court of Circuit. They are empowered to mitigate punishments, and in cases not specially provided for, they can inflict on criminals, punishment to any extent short of death. They superintend and control the proceedings of the Courts of Circuit and the magistrates; they take cognizance of all matters relating to the administration of justice in criminal cases, and to the police of the country, and they expound the Regulations in all doubtful points.

The powers of all the judicial officers have been from time to time defined and modified by various regulations, and rules of procedure, with every check against abuse, and every safeguard for justice that could be devised, have been prescribed. In every case provision is made for the due reception of all evidence on both sides, all the proceedings are recorded, and all (except those before the Nizamut Adawlut) are subject to a revision by a superior court.

* Although

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Although all final sentences of death, or perpetual imprisonment, are passed by the judges of the Nizamut Adawlut, the opinions of the judges of circuit, of the law officers, of the Court of Circuit, and of the law officers of the Nizamut Adawlut, must be submitted to them with the trial in every case, and must be considered before such sentences can be passed. Under the checks thus provided, the fate of persons subject to the extreme penalty of the law is decided with the most scrupulous care and humanity *.

In some parts of Europe (England and France for example), where information affecting the interests of men in society is extensively and easily diffused, most of the offences highly injurious to individuals or to the community are made generally known soon after they are committed, but no accounts of them are recorded; and it is only by statements of the operation of the criminal courts that any sort of approach can be made to an official knowledge of the number of crimes committed throughout the country. In India, however, the state of things is different, and unless through the intervention of officers employed by government, the commission of offences is little known beyond the immediate neigbourhood of the place where they have occurred. It is the special care of the Bengal government to procure an account of every considerable crime committed in the country, whether the culprit be brought before a tribunal or not; but the statements of the number of persons convicted of different crimes, especially those referred to the Nizamut Adawlut, are yet in an imperfect state.

The yearly reports made to government by the superintendents of police contain statements of the number of heinous crimes committed in each zillah or magistrate's jurisdiction, distinguishing them under several heads, of the computed value of property robbed or stolen, and recovered; of the number of persons supposed to be concerned in the crimes committed; of the number convicted and acquitted before the Courts of Circuit and the magistrates, their assistants and law officers, and of the number of persons in confinement in the several gaols at the end of the year. The superintendent sends also occasionally special reports to government, and he corresponds, as circumstances may require, with the magistrates who are subject to his control.

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* The manner in which this duty is performed in Bengal will be seen from the following account:

In five years, viz. from 1816 to 1820, the cases of 734 persons, charged with murder in the Western Provinces, were referred to the Nizamut Adawlut; of these, 307 were acquitted, 349 were sentenced to death or perpetual imprisonment, and 78 to inferior degrees of punishment.

In 325 cases, the decisions of the judges of the Nizamut Adawlut were opposed to one or more of the inferior judicial authorities; that is to say, the circuit judge, the law officer of the Court of Circuit, law officers of the Nizamut Adawlut.

In 78, their decisions were opposed, not to the conviction of the prisoner, but as to the degree of his criminality and his punishment.

In 331, their decisions were not opposed.

Of the opposed decisions, 37 were acquittals, and 288 convictions.

Of the 37 acquittals, 7 were opposed to the opinion of the judge of circuit alone, 2 to the opinions of the judge of circuit and his law officer, 17 to the opinion of the law officers of the Court of Circuit alone, 1 to the opinions of the law officers of both courts, and 10 to the opinions of the law officers of the Nizamut Adawlut alone.

Of the 288 acquittals, the opposed opinions were, 70 of the judge of circuit alone, 99 of the judge of circuit and the law officers of both courts, 41 of the judge of circuit and his law officer, 21 of the judge of circuit and law officers of the Nizamut Adawlut, 37 of the law officer of the Court of Circuit alone, 20 of the law officers of both courts.

In 349 convictions by the judges of the Nizamut Adawlut, their sentences were in opposition to the judge of circuit in 9 cases, to the law officers of the Court of Circuit in 20, to the law officers of the Nizamut Adawlut in 11.

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These statements, however diligently compiled, are subject to errors from various causes. Crimes committed may have been concealed from the native police or from the magistrate, or they may have been misrepresented; the same sort of crime may have been arranged under one head by one officer, and another head by another; often it cannot be known whether crimes were committed as stated, till after a full investigation of circumstances, perhaps not till after trial of the accused.

From these documents the Tables (A.) (B.) and (C.) are taken. The others marked (D.) and (E.) which contain lists of crimes, with the number of persons convicted of such crimes, and those marked 1 to 9, which contain lists of persons punished, without any account of the crimes for which they were sentenced, are, with the exception of No. 3, and those connected with it, extracted from statements of the operation of the criminal courts which were furnished by the Nizamut Adawlut.

The following is an account of the contents of these Tables:

TABLES

In 307 acquittals by the judges of the Nizamut Adawlut, their sentences were in opposition to the judge of circuit in 231 cases, to the law officer of the Court of Circuit in 197, and to law officers of the Court of Circuit in 140.

There are 99 instances of acquittal by the judges of the Nizamut Adawlut, in opposition to the unanimous opinions of the other judicial authorities; but not one instance of conviction.

ABSTRACT OF THE ABOVE.

- Total Cases referred, 734. (*a*)
  - Opposed 325.
    - Convictions, 37.
      - Opposed by the judge of circuit alone - - 7
      - Ditto - ditto - and law officer of ditto - - 2
      - Ditto - by law officer of circuit alone - - 17
      - Ditto - by law officers of both courts - - 1
      - Ditto - by Nizamut Adawlut alone - - - 10
    - Acquittals, 288. (*b*)
      - Ditto - by judge of circuit alone - - - 70
      - Ditto - ditto - and law officers of both courts - 99
      - Ditto - by judge and law officer of circuit - - 41
      - Ditto - ditto - and law officers of Nizamut Adawlut 21
      - Ditto - by law officer of circuit alone - - 37
      - Ditto - ditto - and law officers of Nizamut Adawlut 20
  - Opposed in part, 78.
  - Not opposed, 331.
    - Convictions - 312
    - Acquittals - 19

(*a*) Cases are referred, either because there is a difference of opinion between the judge of circuit and his law officer as to the guilt of the accused, or because the accused having been convicted of murder by their concurrent opinions, is liable to a sentence of death, which can be passed by the Nizamut Adawlut only, or of perpetual imprisonment, which requires the confirmation of the same authority.

(*b*) The number of acquittals by the judges of the Nizamut Adawlut, against the opinion of the circuit judge, as to the guilt of the accused, seems great; but as the circuit judge merely gives an opinion, and has not the responsibility of the capital sentence, he probably refers many in which he has a strong impression of the prisoner's guilt, but doubts whether the evidence is sufficient to convict him.

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TABLES referring to Statements of Crimes reported.

(A.) Contains a list of the most heinous Crimes ascertained to have been committed in the Lower and Western Provinces of Bengal from 1818 to 1828; extracted from the periodical statements of the superintendents of police.

(B.) An Abstract of (A.), showing separately, 1st, the number of depredations with murder; 2d, those with wounding; 3d, those with open violence without personal injury; 4th, the number of murders; 5th, of homicides; 6th, of affrays attended with loss of life.

(C.) A Summary of (A.) and (B.), showing the Crimes as in (B.) committed in nine years, ending with 1826, and in the years 1827 and 1828; also yearly averages in the two periods, the crimes of the Lower Provinces being set down separately from those of the Western.

TABLES referring to the operation of the Criminal Courts.

Crimes. Convictions in lower courts. (D.) Contains a Statement of the Offences for which persons were convicted before the Courts of Circuit in the Lower and Western Provinces together, from 1816 to 1826, with a list of the persons convicted.

(E.) A similar statement referring to the courts of the magistrates for 1826 and 1827 for the Lower and Western Provinces separately.*

TABLES referring to the Number of Persons sentenced, and their Punishments.

No. 1. Contains a list of persons convicted before the Criminal Courts in Bengal in several years, viz. before the Nizamut Adawlut, from 1816 to 1827, before the Courts of Circuit, from 1816 to 1826, and before the Magistrates, from 1824 to 1827, with the punishments to which those persons were sentenced.

No. 2. List of persons sentenced to Imprisonment for above seven years (not for life); ditto, above one year, not above seven years; ditto, not above one year; abstracted from the Table, No. 1.

No. 3. Extract of statements ordered by the House of Commons to be printed, showing the number of persons sentenced to punishment in England and Wales for seven years, ending with 1828.

No. 4. Summary of No. 3, arranged so as to correspond in form nearly with No. 2.

No. 5. Summary showing the number of persons sentenced for four years, viz. by the Nizamut Adawlut, and by the Magistrates, from 1824 to 1827, and by the Courts of Circuit, from 1823 to 1826, taken from No. 1.

No. 6. Extract from No. 3, showing the sentences for the last four years, viz. from 1825 to 1828. These compared with No. 5.

No. 7. Yearly averages in the periods of four years, from No. 6, with the same in proportion to the supposed population of the two countries.

No. 8. List of sentences to Death and Transportation, or Imprisonment for life, from 1816 to 1828, for the Lower and Western Provinces, separately extracted from the statements of the Nizamut Adawlut.

No. 9. Summary for six years, ending with 1827, in Lower and Western Provinces, separately extracted from No. 8, with a corresponding summary for the same six years, extracted from No. 3; also yearly averages of these numbers, and the same in proportion to the supposed population of the Lower and Western Provinces, and England and Wales, respectively.

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* No statement can be given referring to the Courts of Circuit for the years 1827 and 1828, or for the Lower and Western Provinces separately; nor any corresponding to that of (E.) for other years besides 1826 and 1827. No similar statements can be given for the Nizamut Adawlut.

(A.)

NUMBER of HEINOUS CRIMES in the *Lower* and *Western* Provinces of *Bengal*, as reported by the Superintendents of Police, from 1818 to 1828.

LOWER PROVINCES:	1818.	1819.	1820.	1821.	1822.	1823.	1824.	1825.	1826.	1827.	1828.
Decoity with Murder	20	18	21	24	21	25	16	16	21	10	16
Ditto - Torture	7	17	29	12	7	16	11	11	12	10	10
Ditto - Wounding	41	67	53	34	40	32	39	38	44	37	41
Simple Decoity	134	212	141	141	105	118	117	89	105	121	100
River Decoity	15	25	18	16	19	12	19	Included in the above.			
Total Decoity	217	339	262	227	192	203	201	154	182	178	167
With Murder:											
Highway Robbery	3	9	9	12	7	5	8	13	10	6	13
Burglary	2	2	2	2	-	2	2	6	1	3	1
Cattle Stealing	2	-	-	1	-	-	1	-	1	1	-
Theft	2	5	18	13	28	22	23	22	25	30	16
With Wounding:											
Highway Robbery	9	14	23	13	7	11	8	12	15	15	15
Burglary	10	8	14	9	6	13	21	11	17	14	18
Cattle Stealing	-	1	1	-	1	1	-	1	2	-	1
Theft	6	8	11	9	5	4	10	15	16	23	10
Without personal violence, property stolen exceeding 50 rupees:											
Highway Robbery	14	15	34	17	8	11	8	3	6	15	5
Burglary	657	692	659	607	686	686	646	596	586	564	505
Cattle Stealing	21	53	62	44	41	57	80	75	76	98	63
Theft	555	599	550	608	629	678	686	647	726	645	587
Wilful Murder	138	139	99	109	128	118	134	105	119	98	98
Homicide not amounting to Murder	50	74	75	90	89	86	72	131	100	126	122
Violent affrays, attended with loss of life, originating in disputes regarding boundaries or the possession of lands, crops, wells, &c.	23	12	11	24	18	35	44	13	12	8	16
Violent affrays, originating in causes distinct from those mentioned in the preceding column	22	4	1	4	7	1	-	8	9	11	12

NUMBER of HEINOUS CRIMES in the *Lower* and *Western* Provinces of *Bengal—continued.*

WESTERN PROVINCES:	1818.	1819.	1820.	1821.	1822.	1823.	1824.	1825.	1826.	1827.	1828.
Decoity with Murder - - -	8	18	10	14	20	12	19	11	12	20	12
Ditto, with Wounding or Torture	21	26	16	10	17	13	22	22	35	14	13
All other Decoities unattended with personal violence - -	14	26	20	15	16	22	28	18	37	14	20
Total Decoities - - -	43	70	46	39	53	47	69	51	84	48	45
Murder by Thugs - - -	10	10	18	9	27	21	18	19	58	38	23
With Murder:											
Highway Robbery - - - Burglary - - - - Cattle Stealing - - - Theft - - - - -	56	77	105	89	65	101	97	94	132	95	83
With Wounding:											
Highway Robbery - - - Burglary - - - - Cattle Stealing - - - Theft - - - - -	311	320	306	278	177	211	211	267	344	251	234
Without personal violence, property stolen exceeding 50 rupees:											
Highway Robbery - - Burglary - - - - Cattle Stealing - - - Theft - - - - -	1,495	1,694	1,781	1,648	1,723	1,672	1,768	1,776	1,914	1,815	1,581
Wilful Murder - - - -	185	183	128	156	106	113	112	92	107	118	137
Homicide not amounting to Murder	61	88	88	92	93	119	102	101	108	86	97
Violent affrays, attended with loss of life, originating in disputes regarding boundaries or the possession of land, crops, wells, &c.	25	35	44	47	41	33	40	21	36	22	35
Violent affrays, originating in causes distinct from those mentioned in the preceding column	24	22	38	50	41	20	39	21	23	32	29

(B.)

ABSTRACT of the Chief Parts of Table (A.)

	LOWER PROVINCES.				WESTERN PROVINCES.			
	1818 and 1820.	1821 and 1823.	1824 and 1826.	1827 and 1828.	1818 and 1820.	1821 and 1823.	1824 and 1826.	1827 and 1828.
Depredations with Murder (*a*) - -	113	162	165	96	312	358	460	271
Ditto, with torture or wounding (*b*)	319	220	283	194	1,000	706	901	512
Ditto, with open violence, but without personal injury (*c*) - -	545	411	330	221	60	53	83	34
Murder without depredation (*d*) -	376	355	358	196	496	375	311	255
Homicide not amounting to Murder -	199	265	303	248	237	304	311	185
Affrays with loss of life - - -	73	89	86	47	188	232	180	118

(*a*) Including the crimes referred to in the preceding Table under the heads "Decoity with Murder," "Murder by Thugs," and "Highway Robbery," "Burglary," "Cattle Stealing," and "Theft with Murder." The head "Murder by Thugs," occurs in the Western Provinces only.

(*b*) Including "Decoity with Wounding," or "Torture," and "Highway Robbery, &c. with Wounding."

(*c*) Including "Simple Decoity," "River Decoity," and all other Decoities unattended with Personal Violence.

(*d*) "Wilful Murder."

The heads "Highway Robbery, Burglary, Cattle Stealing, and Theft without Personal Violence," are not referred to in this or in any of the following Tables. It is supposed that the accuracy of the Reports in regard to such offences cannot be relied on.

(C.)

TOTAL NUMBER and YEARLY AVERAGES of Table (B.), showing the NUMBER of OFFENCES in a Period of Nine Years, from 1818 to 1828; compared with those in the Years 1827 and 1828.

	LOWER PROVINCES.				WESTERN PROVINCES			
	Total in 9 Years, ending with 1826.	Total in 1827 and 1828.	Yearly Averages.		Total in 9 Years, ending with 1826.	Total in 1827 and 1828.	Yearly Averages.	
			In 1st Period.	In 2d Period.			In 1st Period.	In 2d Period.
Depredations with Murder - -	440	96	$48\frac{8}{9}$	48	1,130	271	$125\frac{5}{9}$	$135\frac{1}{2}$
Ditto, with torture or wounding -	822	194	$91\frac{3}{9}$	97	2,607	512	$289\frac{8}{9}$	256
Ditto, with open violence, but without personal injury - - -	1,286	221	$142\frac{8}{9}$	$110\frac{1}{2}$	196	34	$21\frac{7}{9}$	17
Murder without depredation - -	1,089	196	121	98	1,182	255	$131\frac{3}{9}$	$127\frac{1}{2}$
Homicide not amounting to Murder -	767	248	$85\frac{2}{9}$	124	852	185	$94\frac{6}{9}$	$92\frac{1}{2}$
Affrays with loss of life - - -	248	47	$27\frac{3}{9}$	$23\frac{1}{2}$	600	118	$66\frac{6}{9}$	59

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(D.)

COMPARATIVE STATEMENT of SENTENCES for OFFENCES against PROPERTY and those against the PERSON, and other Crimes, passed by the Courts of Circuit in *Bengal*, from 1816 to 1826.

	NUMBER OF PERSONS SENTENCED.			
	1816 to 1818.	1819 to 1821.	1822 to 1824.	1825 to 1826.
OFFENCES AGAINST PROPERTY:				
Arson	35	65	66	47
Burglary	2,853	1,177	1,195	1,036
Cattle Stealing	203	19	85	31
Child Stealing	48	99	107	57
Counterfeiting and uttering counterfeit coin	14	33	47	21
Embezzlement	150	57	108	49
Forgery and uttering	27	55	71	60
Larceny	1,516	457	491	223
Robbery on the person on the highway and other places	50	117	213	637
Receiving stolen goods	374	223	380	173
Total	5,270	2,302	2,763	2,334
OFFENCES AGAINST THE PERSON:				
Adultery	95	40	51	20
Affray	1,861	1,692	1,917	1,136
Assault	157	164	212	174
Manslaughter	258	212	421	250
Rape	3	10	3	2
Shooting, wounding or poisoning with intent to kill	199	209	251	199
Sodomy	5	7	5	6
Total	2,578	2,334	2,860	1,778
VARIOUS OTHER OFFENCES:				
Felony and misdemeanor not otherwise described	376	146	189	107
Perjury	78	100	147	66
Total	454	246	336	173

(E.)

COMPARATIVE STATEMENT of SENTENCES for OFFENCES against PROPERTY and those against the PERSON, and other Crimes, passed by the Magistrates in the *Lower* and *Western* Provinces of *Bengal*, in 1826 and 1827.

	Number of Persons sentenced.	
	Lower Provinces.	Western Provinces.
OFFENCES AGAINST PROPERTY:		
Arson	154	31
Burglary	2,433	1,995
Cattle Stealing	2,048	3,671
Frauds and other offences	6,161	3,302
Larceny	8,310	7,927
Plundering	768	97
Receiving stolen goods and harbouring thieves	431	909
Snatching from the person	1,077	1,391
Total	21,382	19,323
OFFENCES AGAINST THE PERSON:		
Affray	434	743
Assault and battery	6,535	3,965
Manslaughter	44	11
Riot	2,259	700
Total	9,272	5,419
VARIOUS OTHER OFFENCES:		
Bribery	289	70
Escape from custody	149	72
False complaint	1,728	652
Neglect of duty	10,332	6,652
Perjury	178	41
Resistance of process	1,010	533
Vagrancy	183	55
Total	13,869	8,077

— No. 1. —

BENGAL.

LIST OF PERSONS sentenced by the Criminal Courts in *Bengal* to DEATH, TRANSPORTATION, or IMPRISONMENT, from 1816 to 1827.

	1816.	1817.	1818.	1819.	1820.	1821.	1822.	1823.	1824.	1825.	1826.	1827.
By the Nizamut Adawlut:												
To death - -	115	114	54	94	55	58	50	77	51	66	67	55
Transportation or Imprisonment for life -	282	268	261	345	324	278	165	118	145	128	171	153
Imprisonment above seven years - -	60	69	67	77	61	124	184	203	297	334	137	65
Ditto above one year, not above 7 years -	88	82	82	156	306	337	220	232	269	401	296	227
Ditto not above one year - -	39	33	20	27	26	7	18	24	56	50	28	25
By the Courts of Circuit:												
Imprisonment above seven years - -	290	507	308	94	40	21	33	13	161	208	214	—
Ditto above one year, not above 7 years -	1,363	1,755	1,961	1,001	1,285	1,354	1,206	1,414	2,118	1,524	1,665	—
Ditto not above one year - - - -	621	560	828	374	418	295	323	255	379	330	324	—
By the Magistrates:												
Imprisonment above one year - -	- -	- -	- -	- -	- -	- -	- -	- -	3,747	3,675	4,075	4,141
Ditto not above one year - - - -	- -	- -	- -	- -	- -	- -	- -	- -	24,266	24,976	18,229	16,575

Note.—The statements of the sentences of the Nizamut Adawlut refer to the years from 1816 to 1827; those of the Court of Circuit, from 1816 to 1826; and those of the Magistrates, to four years only, viz. from 1824 to 1827. Sentences of death and transportation, or imprisonment for life, are passed by the Nizamut Adawlut, exclusively; sentences of imprisonment for above seven years are passed by the Nizamut Adawlut, or by the Courts of Circuit (who have power to pass sentence to the extent of 14 years' imprisonment in certain cases); sentences to imprisonment above one year, and not above seven years, are passed by the Nizamut Adawlut, or the Courts of Circuit, or by the Magistrates (who are empowered to pass sentence of imprisonment as far as two years in certain cases); sentences to imprisonment not above one year are passed by the Nizamut Adawlut, the Courts of Circuit, or the Magistrates. In these Tables, the sentences by the Courts of Circuit to imprisonment for one year are included under the fourth head, not the fifth. In the documents from which the numbers are taken, such sentences are mixed up with those of imprisonment for two years, and cannot be separated. The statements of the sentences of the Nizamut Adawlut are in great detail, without any abstract, and they are incorrect and imperfect in many places; but the errors on this account, or from the irregularity above noticed, are not of a nature materially to affect the general results which the Tables are intended to show.

— No. 2. —

LIST OF PERSONS sentenced to TEMPORARY IMPRISONMENT, arranged according to the Sentences; extracted from Table 1.

	1816.	1817.	1818.	1819.	1820.	1821.	1822.	1823.	1824.	1825.	1826.	1827.
Imprisonment above 7 years:												
By Nizamut Adawlut	60	69	67	77	61	124	184	203	297	334	137	65
By Courts of Circuit	290	507	308	94	40	21	33	13	161	208	214	wanting
Imprisonment above one year, not above 7 years:												
By Nizamut Adawlut	88	82	82	156	306	337	220	232	269	401	296	227
By Courts of Circuit	1,363	1,755	1,961	1,001	1,285	1,354	1,206	1,414	2,118	1,524	1,665	wanting
By Magistrates -	- -	wanting	- -	- -	- -	wanting	- -	- -	3,747	3,675	4,075	4,141
Imprisonment not above one year:												
By Nizamut Adawlut	39	33	20	27	26	7	18	24	56	50	28	25
By Courts of Circuit	621	560	828	374	418	295	323	255	379	330	324	wanting
By Magistrates -	- -	wanting	- -	- -	- -	wanting	- -	- -	24,266	22,976	18,229	16,573

— No. 3. —

ENGLAND AND WALES.

EXTRACT from the STATEMENTS ordered by the House of Commons to be printed, 23d February 1829; showing the Number of Persons in *England* and *Wales* sentenced to DEATH, TRANSPORTATION or IMPRISONMENT, in 7 Years, from 1822 to 1828.

SENTENCES.	1822.	1823.	1824.	1825.	1826.	1827.	1828.	TOTAL.
Death * - - - - -	1,016	968	1,066	1,036	1,203	1,526	1,165	7,980
Transportation for life - -	132	116	117	126	133	198	317	1,139
Ditto - 28 years - -	-	-	-	-	-	1	1	2
Ditto - 21 ditto - -	-	-	-	-	-	1	-	1
Ditto - 14 ditto - -	84	78	107	129	185	293	508	1,384
Ditto - 10 ditto - -	-	-	-	-	-	-	1	1
Ditto - 7 ditto - -	1,316	1,327	1,491	1,419	1,945	2,032	2,046	11,776
Ditto - 4 ditto - -	—	—	—	—	—	—	—	—
Imprisonment - 5 years - -	2	-	-	-	-	1	-	3
Ditto - - 4 years - -	-	-	-	-	-	-	1	1
Ditto - - 3 years - -	11	11	11	7	11	11	11	73
Ditto, 2 years and above 1 year	376	324	339	365	297	296	243	2,240
Ditto, 1 year and not above 6 months - -	1,129	1,074	1,218	1,193	1,204	1,433	1,117	8,368
Ditto - 6 months and under	3,899	4,040	4,861	5,408	5,819	6,251	5,991	36,269
* Of whom were executed - -	97	54	49	50	57	70	79	456

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— No. 4. —

ENGLAND AND WALES.

SUMMARY of the NUMBERS in Table 3, arranged under Heads, to correspond nearly with those of Tables of 1 and 2.

SENTENCES.	1822.	1823.	1824.	1825.	1826.	1827.	1828.	TOTAL.
Death * - - - - - -	1,016	968	1,066	1,036	1,203	1,526	1,165	7,980
Transportation for life - -	132	116	117	126	133	198	17	1,139
Transportation for above 7 years -	84	78	107	129	185	293	509	1,385
Transportation or Imprisonment above 1 year, not above 7 years	1,705	1,662	1,842	1,791	2,253	2,540	2,301	14,094
Imprisonment not above 1 year -	5,028	5,114	6,078	6,601	7,023	7,684	7,108	44,637
* Of whom were executed - -	97	54	49	50	57	70	79	456

— No. 5. —

BENGAL.

SUMMARY of the NUMBERS of Table 1, for Four Years; viz. of those referring to the Nizamut Adawlut and the Magistrates, from 1824 to 1827; and of those referring to the Courts of Circuit, from 1823 to 1826.

SENTENCES.	1823.	1824.	1825.	1826.	1827.	TOTAL of 4 Years.
Death - - - - - - -	-	51	66	67	55	239
Transportation or Imprisonment for life - - - - - - - -	-	145	128	171	153	597
Imprisonment above 7 years:						
By Nizamut Adawlut - - -	-	297	334	137	65	1,429
Courts of Circuit - - - -	13	161	208	214	- -	
Imprisonment above 1 year, not above 7 years:						
By Nizamut Adawlut - - -	-	269	401	296	227	23,552
Courts of Circuit - - - -	1,414	2,118	1,524	1,665	- -	
Magistrates - - - - -	-	3,747	3,675	4,075	4,141	
Imprisonment not above 1 year:						
By Nizamut Adawlut - - -	-	56	50	28	25	83,491
Courts of Circuit - - - -	255	379	330	324	- -	
Magistrates - - - - -	-	24,266	22,976	18,229	16,573	

— No. 6. —

ENGLAND AND WALES, AND BENGAL.

TOTAL of the NUMBERS in Table 3, for Four Years (from 1825 to 1828); and of those in Table 5, for Four Years (from 1823 to 1826, and 1824 to 1827), compared.

SENTENCES.	England and Wales.	Bengal Provinces.
Death	4,930 *	(a) 239
Transportation for life, or Imprisonment for life	774	597
Transportation or Imprisonment for above 7 years	1,116	1,429
Ditto - above 1 year, not above 7 years	8,885	23,552
Imprisonment, not above 1 year	28,416	83,491
* Of whom were executed	256	(a) 239

(a) It is supposed that in Bengal all who were sentenced to death were executed; probably almost all were executed.

— No. 7. —

ENGLAND AND WALES, AND BENGAL.

YEARLY AVERAGES of the NUMBERS in Table 6, and the same in proportion to the Population of the two Countries, supposing (a) *England* and *Wales* to contain 13 Millions of Inhabitants, and the *Bengal* Provinces 60 Millions.

SENTENCES.	Yearly Averages.		Proportion of the Yearly Averages to the Population.	
	England and Wales. (b)	Bengal Provinces.	England and Wales. (b)	Bengal Provinces.
Death *	1,232 $\frac{3}{4}$	59 $\frac{3}{4}$	1 in 10,547	1 in 1,004,182
Transportation or Imprisonment for life	193 $\frac{2}{7}$	149 $\frac{1}{4}$	1 in 67,173	1 in 402,010
Transportation or Imprisonment above 7 years	279 $\frac{3}{4}$	357 $\frac{1}{4}$	1 in 43,610	1 in 167,669
Ditto - above 1 year, not above 7 years	2,221 $\frac{1}{4}$	5,589 $\frac{3}{4}$	1 in 5,852	1 in 10,735
Imprisonment not above 1 year	7,104	20,872 $\frac{5}{4}$	1 in 1,829	1 in 2,880
* Of whom were executed	64	59 $\frac{3}{4}$	1 in 203,281	1 in 1,004,184

(a) The population of England and Wales is set down at 13,000,000, on the ground of the last Census. There has never been any Census of the Bengal Provinces.
For an estimated account of their population, *see* Note, Table 9.

 (b) The

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(*b*) The numbers for Ireland corresponding with those of Table 6 and 7, were as follows: the population, according to the Census of 1821, being taken at 7,000,000.

	Total in 7 Years, ending with 1828.	Yearly Average.	Yearly Average in proportion to Population.
Sentenced to Death * - - - -	1,896	270 $\frac{6}{7}$	1 in 25,840
Transportation for life - - - - -	388	55 $\frac{3}{7}$	1 in 126,289
Ditto - above 7 years - - - -	567	81	1 in 86,419
Ditto - and Imprisonment above 1 year, not above 7 years - - - - -	5,761	823	1 in 8,505
Imprisonment not above 1 year - - -	50,945	7,279 $\frac{2}{7}$	1 in 961
* Of whom were executed - - - -	332	47 $\frac{3}{7}$	1 in 147,593

In the seven years there were accused of murder 2,604 persons, of whom 224 were sentenced to death, and 155 executed (*aa*).

In France in 1829 there was 89 persons sentenced to death, and 273 to hard labour for life. These numbers are as 1 in 337,078, and 1 in 109,813 respectively in a population of 30,000,000. One thousand and thirty-three were sentenced to temporary hard labour, and 1,222 to imprisonment (reclusion), or 1 in 29,041, and 1 in 24,549 of the population (*bb*). In other countries the number of crimes and criminals appear to be much greater in proportion to the population.

In seven provinces under the Austrian government, the population of which is stated to amount to 14,436,000, it appears from a statistical table, that in two years (viz. 1819 and 1823) the number of homicides brought to trial amounted to 1,032, the yearly average of which (516) is 1 in 27,976 of the population. In one of the provinces, Dalmatia, the population of which is stated to be 318,000, the number of trials for homicide in 1823 is set down at 179; for robbery, 489; for burning, 200; for wounding and maiming, 304 (*c*).

In Spain the state of crime is described in the following account, which has been published in this country as an extract from the Madrid Gazette.

(*aa*) Parliamentary Return, ordered by the House of Commons to be printed, 10th May 1829.

(*bb*) Extract from the Report of the Minister of Justice for 1829, Courier Français, 3d February 1813.

(*c*) Extracts from Statistical Tables, Times, 14th January 1830.

STATEMENT of OFFENCES which have formed the subject of Judicial Proceedings in Spain during the Year 1826.

Homicides	1,233
Infanticides	13
Cases of Poisoning	5
Anthropophagus	1
Suicides	16
Duels	4
Dangerous Wounds, by cutting, maiming, &c.	1,773
Rapes	52
Cases of Public Incontinence	144
Slanders	369
Blasphemies	27
Incendiaries	56
Thefts	1,620
Cases of Coining	10
Forgeries	43
Breaches of Trust	66a
Prevarications	10
Excesses of various kinds	2,782 (*a*)

Of the persons charged with these offences, 167, or 1 in 83,772 of the supposed population were sentenced to death, and 12,578 to other punishments. The population of Spain is said to be about 14,000,000.

(*a*) Jurist, No. 4.

— No. 8. —

BENGAL:—LOWER AND WESTERN PROVINCES.

SENTENCES to DEATH, or to TRANSPORTATION or IMPRISONMENT for LIFE in the *Lower* and *Western* Provinces of *Bengal*, compared.

	1816.	1817.	1818.	1819.	1820.	1821.	1822.	1823.	1824.	1825.	1826.	1827.
Death:												
Lower Provinces	64	57	24	42	25	22	20	42	31	26	26	22
Western Provinces	51	57	30	52	30	36	30	35	20	40	41	32
Transportation or Imprisonment for Life:												
Lower Provinces	213	214	158	240	224	189	103	56	89	51	70	96
Western Provinces	69	54	103	105	100	89	62	62	56	77	101	57

— No. 9. —

ENGLAND AND WALES:—BENGAL, LOWER AND WESTERN PROVINCES.

SENTENCES to DEATH, and TRANSPORTATION or IMPRISONMENT for LIFE, in Six Years, ending 1827; and EXECUTIONS in the same Period in *England* and *Wales*, and in the *Lower* Provinces and *Western* Provinces of *Bengal*, compared: Also, the YEARLY AVERAGES, and the same in proportion to the Population, supposing the *Lower* Provinces of *Bengal* to contain Forty Millions, and the *Western* Twenty Millions of Inhabitants.

	Total Sentences and Executions from 1822 to 1827.			Yearly Averages.			Ditto in proportion to the Population.		
	England and Wales.	Lower Provinces.	Western Provinces.	England and Wales.	Lower Provinces.	Western Provinces.	England and Wales.	Lower Provinces.	Western Provinces.
Death	6,815	168	198	1,135 5/6	28	33	1 in 11,445	1 in 1,428,571	1 in 606,060
Transportation or Imprisonment for life	822	465	415	120 2/6	77 3/6	69 1/6	1 in 108,033	1 in 516,129	1 in 289,159
Executions	377	168	198	62 5/6	28	33	1 in 206,897	1 in 1,428,571	1 in 606,060

Martis, 17° die Aprilis, 1832.

The Right Hon. ROBERT GRANT in the Chair.

IV. JUDICIAL.

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Thomas Fortescue, Esq.

THOMAS FORTESCUE, Esq., called in and further examined.

935. How long is it since you returned from India?—I returned in 1821.

936. Did you while you were in India reside much in or near Calcutta?—I resided in Cuttack as Secretary to the Commission appointed for arranging the civil affairs of it after the conquest. I have been also officiating Collector of the district of Midnapore in Orissa, officiating Collector of the district of Dacca, and officiating Collector of the district of Moorshedabad in Bengal.

937. Have you frequently visited Calcutta itself?—Yes, very frequently; and I was there as Secretary to Government in the Territorial department for a short time.

938. While you were in India did you observe a great approximation in the natives at the presidency to the habits or modes of thinking of Europeans?—A good deal, certainly. The number of Europeans, and the establishment of His Majesty's Court, led them much to a knowledge of the character and bearing of the laws of the Europeans.

939. Before

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939. Before you left India were there any institutions for the education of the natives established by government?—They were commencing.

940. According to your information, has not a considerable effect been produced by those institutions since that time?—As far as I can learn there has.

941. Are you aware also that since that time there has been an increased employment of natives in the administration of justice, or otherwise in the administration of public affairs?—I have been informed so.

942. What would be your general idea of the expediency and practicability of gradually increasing the degree in which they are employed in such ways?—I think, both in justice to them in their own country, and in point of talent, they ought to be more employed, particularly being so well qualified for almost all the duties of the different situations connected with the administration of the country; I have had a good deal to do with them myself in that way.

943. How far have you had opportunities yourself of seeing them employed in the administration of public affairs?—In the different situations I have held in India, I have particularly attended to their mode of conducting the business entrusted to them, and have most frequently found them extremely capable, particularly when confidence and salary have been fair and liberal; their conduct too has been very satisfactory to the natives. In general, when they have misconducted themselves, it has been greatly owing to the want of consistent conduct towards them.

944. Do you mean to say that if they received a liberal remuneration, they would not be tempted to those deviations from duty to which in many cases they are liable; such as the pursuit of irregular gains, or the indulgence of partialities or corruption?—I think they would not; I have had means of observing them in situations where their authorized emoluments have been below what it is possible to conceive could induce a man to labour, and in which the temptations to unlawful gain might scarcely be, in consequence, one would say, to be resisted. I could mention several instances, in the course of my experience, where the average of the net fees of native commissioners was but 10 rupees a month, yet they were employed every day in the week from morning till night. I noticed also that that small pittance was not paid to them till months after it became due; and with respect to the vakeels officiating under them, their net income too has not exceeded four rupees a month: and moreover, it should be remembered, that there are instances, under the Regulations in which the native commissioners and their officers are subject to much official labour and expense, and yet receive no remuneration at all, or but a most disproportionate one; for example, in pauper suits they get nothing: in other cases, when a compromise or razeenama is tendered *before* the pleadings are completed, they get nothing; if it is tendered at any time *after* perusal of the record, they are entitled but to half their ordinary commission: again, in cases nonsuited they get nothing; further, a vast detail and trouble is imposed upon them in respect of distraints and bringing property to sale, yet if nothing is sold they get nothing. It is obvious that all this is unfair, when the commissions are paid, not by fixed salaries, but by their fees, and that all their establishments, pens, ink and paper, &c. are defrayed at their own cost; and equally obvious that their duty and interest clash. These duties relate to the agricultural community; yet the Regulations for the benefit of this class, which authorize the employment

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employment of the native commissions in the interior, were at times not acted upon, and in some instances certain Regulations were not to be found in the district office.

945. By whose neglect had that taken place; who had the charge of those?—I cannot particularly say; the ordinary course is for the government to send up the Regulations, when a certain form of promulgation takes place, after which the enactments are deposited amongst the records.

946. As far as you have observed, under a proper system the employment of them might be very considerably extended, only proceeding gradually and with prudence?—I consider their capacity for investigation in India to be, I would say, superior to our own; I have often associated them with me, both in the investigation of civil and criminal matters, and have derived the greatest assistance from their quick penetration and knowledge of the character of those whom I had to deal with.

947. Do you speak of Hindoos or Mahomedans?—Of both Hindoos and Mahomedans, and those principally attached to my office; I make no distinction between them.

948. Should you however say that there was a want of regard for character among them, in comparison with Europeans?—Their loss of character is certainly much more common, and they have not those high principles which European officers have; but it is greatly to be accounted for in the subaltern offices they hold, to the paltry allowance they receive, to the strong temptations thrown in their way, and the consequent distrust manifested in general towards them.

949. You think that a regard to character might be created by proper measures?—I have no doubt of it; for I have known them in the interior of the country acting greatly upon their own responsibility, and to the entire satisfaction of the neighbourhood. I have myself often deputed them for special purposes, as a kind of local commission, and they have performed the duty to content me and gratify the people; they have brought litigated points to a quick and final close, which but for their aid would have harassed the zillah (or European's) court for an indefinite period.

950. Do you ascribe the advantage that they have over Europeans in the investigation of difficult points, to their much better acquaintance with the habits and manners and feelings of their own countrymen?—Certainly; for when I have been sitting with them rather as an arbitrator than judge, and they have discussed matters in the form of punchayet, I have observed the mode of questioning and the attention they paid to gesture and manner to be more particular than would probably have occurred to an European, yet more suited to the character of those examined by them, and better to elicit the truth; the subject of dispute has in consequence been settled satisfactorily, and with a quickness of repartee that I was quite unable to follow. Besides, in taking evidence they often interrogate so as to get at truth through aid of prejudices; for they will consider caste, rank in life, being single or married, &c., and so frame their questions as to call down the worst of consequences upon children and relations if falsehood be spoken. Such points have astonishing influence with the natives, though often but little attended to by us.

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951. Should you think that they are as yet ripe to act in judicial situations, except under the superintendence and perhaps the strict supervision of Europeans, and subject also to an appeal to some European tribunal?—I think so great a transition at once from what their situation was when I resided in India, would not be advisable, but gradually they would become so. They are exceedingly quick in acquiring knowledge, and very desirous of it when it meets the approbation of those whose good opinions they solicit.

952. Have you considered how far they could be invested with the functions of police, at least in the presidencies; as for example, of justices of the peace?—I think they are perfectly competent to such duties, and might be entrusted with them; it is an opinion which I submitted during my residence in India to the government, suggesting that they might be entrusted with petty criminal jurisdiction, and empowered to inflict punishment by fine, or by imprisonment, or by stripes, according to the circumstances of the case.

953. Would it be proper to employ them in the presidencies in those duties which are understood to belong to magistrates in this country, namely, that of committing persons for trial before the courts?—I think perfectly so; for as officers employed under the magistrate in preparing commitments, they have, I may say, often performed the whole of the detail; their judgment is sufficiently good: but I should say that they ought not for the present to have cognizance of cases in which Europeans are concerned. Amongst themselves they might act, but not where an European was either the complainant or the person aggrieved; for they have so great a deference for their character generally, and often in such awe of them, that they might be induced by lenity or apprehension to swerve from an equitable decision.

954. Does that awe and deference proceed mainly from their having to do with officers either civil or military employed by the government?—I think their feeling towards an European is such, and their manner too so disposed to court them, that I should be apprehensive they might favour the Europeans to the prejudice of their own countrymen.

955. The Committee has been informed that zemindars and other natives of power have such influence as to render it unlikely that persons in such a situation would act impartially in cases arising between natives; does your opinion coincide with that which has been given to the Committee?—Neither my experience nor my opinion coincide with that notion. I am satisfied that if they were liberally paid and a fair confidence shown towards them, they would maintain their situation with great credit to themselves and impartiality to the community. I am of opinion that the distance constantly subsisting between the European officers of government and the native judicial officers is such as not to give satisfaction or confidence to the natives; further, that when they do well it is not generally known perhaps, nor noticed to them in terms of encouraging approbation, and that when they do ill they are censured without sufficiently liberal construction of their motives and the merits of the complaint against them; and that there is not such easy intercourse to discuss points of general duty as to enable them to receive instruction from the European officer. The native I have always found anxious to pick up whatever was useful for his proper and official conduct. All this is often

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owing to the want of time on the part of the European; and this want of time proceeds from an injudicious division of the aggregate duties of the whole country amongst the officers of the government, and not calling in the aid sufficiently of the Indian community. A great deal of trifling matter is obliged to be brought before the European, which could with superior advantage be originally disposed of by the native.

956. Are the native judicial officers allowed to sit in the private apartments of the European functionary?—Yes, most frequently; I ever found them, when a new regulation appeared, glad to come to me and talk it over.

957. Is that a usual practice?—I do not believe it to be very general.

958. On the supposition that by any change in the system of intercourse with India, the number of Europeans settled or resident in the interior of the country were considerably augmented, do you think that any and what changes would be requisite or expedient in the system of the judicial administration, as conducted by the Company's courts?—With reference to their being enabled to purchase lands and become proprietors, I think a great *desideratum*, amongst many others, is the unsettled state of property in India with respect to the ryots' rights, which it should be a primary object to adjust. A very great change would be requisite in the judicial system were Europeans to be numerous: it would have to be determined whether the present existing Mahomedan law, as modified by our regulations, should remain, or whether the English law be more generally administered; and in either case it would be necessary, I presume, to have the establishments augmented by European functionaries subordinate to the judge and magistrate. The ordinary gaols are not suited for European constitutions, and must be considerably and suitably enlarged. The subject however is so wide and embraces so much, that it is not possible in a short reply to allude to its great details.

959. When you speak of the necessity of the gaols being very much enlarged, do you not contemplate a very considerable resort of the lower class of Europeans to them?—No, not so much as to that, as to their being comfortable, because our gaols are at present such as would render it death probably for an European to be confined in them: the processes to be served must be by Europeans, for violent offenders would not be manageable by the native officers.

960. If they were subject to one general law, and that law administered partly by the medium of the natives, why should not the native power be able to master a single individual?—Occasions for such interference, when they have occurred in India, have generally been very disgraceful to the European character; and the natives are so disposed to cover the misconduct of Europeans on the one hand, and so afraid of them on the other, that I apprehend there would be a very great difficulty, though it might be overcome.

961. What are the species of outrages committed by Europeans to which you especially refer?—Great contempts of court, if there were but one European judge; there is no community, no publicity, no public out of court to appreciate what is done in it: an European in his own language might be extremely offensive, and make it very difficult for the judicial officer to conduct a case before him with decorum.

962. Are

962. Are you aware of many cases of the description to which you have alluded which have occurred?—No, I am not; but I can well imagine such to occur, from what I have understood to have happened, upon such characters as I contemplate coming into court.

963. Were the Europeans, with respect to whom you have alluded, heretofore chiefly officers either civil or military in the employ of government?—No; I allude chiefly to persons out of the service.

964. Are there many, except the indigo planters residing in the interior of the country, out of the service of the Company?—No; there are sometimes low subordinate Europeans, but not many; they have got to India by working their passage out or abandoning their ships; persons of that kind have often acted very offensively against the natives. The persons I allude to would be perhaps few, but they would be very mischievous.

965. In what capacity were those whom you have known employed?—They were generally assistants under some head person either managing the indigo manufacture or some other manufacture.

966. What other species of manufacture?—Besides indigo, collecting in cotton or sugar. I am alluding rather to what might be from an increase of Europeans than what has been, because the law has hitherto been such as to render Europeans very cautious how they subject themselves to removal. There is, I believe, a strong opinion in the Indian service in favour of the introduction of Europeans, but it is to be considered whether the improvements in India shall be based upon its institutions, or sought for through our own. I think the natives of India are entitled to have their interests favoured in preference to those of this country. I look to the further introduction of Europeans, and the other arrangements that are going on, as tending ultimately to the abolition of the present laws of India, their language and religion too. There is no doubt that the intelligence of the Europeans and their skilful application of capital will very much improve the country at large, and in respect of cultivation and population, but I have great doubts whether the result of all such improvements will not be vastly on the side of our own country.

967. When you say that you believe there is a general idea that it would be advantageous to have an increased number of Europeans in the country, do you suppose that the opinion is in favour of Europeans who should enter for the purposes of settlement, or of carrying on some commercial or agricultural pursuit in the country, or do you suppose that the opinion is in favour of an unrestricted entrance of Europeans of all classes?—The opinion that I alluded to has reference to Europeans going to and residing in India for the purpose of commerce.

968. Supposing the resort of Europeans in future to be very limited in point of number, and to consist mainly of individuals either possessed of capital or of very superior skill, should you then imagine that it would be necessary to make the great alterations in the present system of India to which you have previously already adverted?—The alteration would depend necessarily very much on the number of Europeans; but what I mean to say is, that in cases coming before the courts it must be determined by what law they shall be adjudged, and also in case of punishment, what is to become of the individual.

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969. Do you not conceive that, taking the present regulations, and the laws at present enforced, both criminal and civil, throughout the provinces of India, a code might be framed applicable to Europeans as well as natives residing within them?—I think, without any great difficulty: as to the Mahomedan criminal law, it is a mere name at present; and as far as the civil laws go, they would of course be allowed to operate between the Hindoos and Mahomedans.

970. Supposing, then, such a code to be framed, would not that remove much of your objection to the settlement of Europeans in India, in so far as the judicial system goes?—Certainly. I would still advert to the administration of those laws when so modified.

971. Do you conceive that the laws being so modified, and the native judges being sufficiently remunerated for their trouble, and being treated with the respect due to their station, there would be any difficulty in their administration arising from the settlement of Europeans among them?—I think at first there might be, but as they gradually became familiarized with their duty, and felt themselves upheld in the responsibility they undertook, they would execute the laws well. They would themselves however have at present, I think, objections to administer the laws between natives and Europeans.

972. Do you not contemplate that the settlement of Europeans in India, with their knowledge of the language and of the habits and of the manners of the people, acquired by their intercourse with them, would enable you to select from amongst those settlers individuals capable of acting as magistrates, and in some instances of filling with benefit judicial situations which might become vacant?—That must depend a good deal upon their capacity and intelligence in those various points. I have certainly seen individuals, out of the service, whose character and knowledge perfectly qualified them for such duty; but it must entirely depend upon that.

973. Would they not have the means of acquiring a knowledge of the feelings and manners and habits of the people, as well as of their language, very far superior to those which are now possessed by the European functionaries in India?—By no means. I should say their intercourse is comparatively very much limited; because, in the first place, they do not move like our officers all over the country: there is the greatest contrast in its different parts; yet such does not prove any fallacy, though indispensable, I would add, for forming anything like a just opinion on the customs, habits, &c. of India.

974. Supposing an individual to manage, for instance, a commercial concern, would it not be necessary for him to mix with much greater intimacy with the natives, than it would for a public functionary of government residing in the country?—Not more than a collector, for instance, does in general; he would be in immediate intercourse certainly with the people much more than the judicial officer usually is, but not more than the revenue officers or custom officers; besides, his duty would be to attend to his own business, more than to seek to attain to knowledge qualifying him for a foreign station.

975. Would not he be prompted very much more by his own private interest to acquire a knowledge of the manners and habits of the people, than the public functionary would?—Merely to enable him to conduct his commercial affairs with success

success, his knowledge would be very limited. I have known individuals who conducted business, and yet could scarcely speak the language. There are however others, on the other hand, out of the service, whose knowledge of languages and manners has been very superior.

976. Do you not conceive that the children of the country, born and educated in the country, would have a far greater knowledge of the manners and habits and language of the people than persons sent out of this country?—I do not think they would, judging from what I have observed: they are generally disliked and despised both by natives and Europeans, though their knowledge of the language is often very good; they are not in easy intercourse with either the native or European.

977. Are they not also looked down upon by the government?—Yes, but I know not how it could be otherwise.

978. And is not their condition one of considerable hardship?—It is; it seems to be a great difficulty, and I believe the government acknowledge it to be such, to determine what course to pursue with respect to them. The natives would, I have no doubt, be much dissatisfied to see those persons preferred, and placed over them.

979. So far as you have observed of the intercourse between European residents not in the service and natives, should you say that their treatment of the natives was decidedly different from the treatment of the natives by the Company's servants in public situations?—Yes, I should think so, from the circumstance of one having authority, that is the Company's officer, and the other having always to deal in a fictitious name with them; he could never appear openly as having any right to deal with them in matters of commerce; he was not allowed to hold land.

980. So far as that cause operates, if the law gave them a legal right in the country, would the inducement be removed which now operates upon them to treat the natives with more respect?—That would greatly depend upon their own characters; one must always recollect that their object would be their commercial pursuits, their gain, in short, and that it must mainly depend upon their internal feelings whether they would or would not abuse authority given to them. With respect to the Europeans in some parts of the country where I have been, I must say that I should have every confidence in their conducting themselves well, had they possessed the power which it is now proposed to give them, that is, authority to hold lands and to act openly.

981. Do you not conceive that the Europeans now residing in the provinces, and whose business requires that they should hold or occupy lands, are placed in a very false position as arising from their being prevented from holding and occupying land in their own names?—It is so; at the same time it has had the good effect of making them cautious how they encouraged or permitted disturbance in matters connected with their own mercantile pursuits, while the state of the laws and local courts rendered this extremely necessary.

982. Have Europeans the same means of preventing disturbances on the part of their native servants, when in truth they hold their lands in the names of those native servants?—No; because if they appeal to the courts it would be difficult for them to establish that power over their agents which their private arrangements have given them. Their agents are the ostensible holders of the land which they (the

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(the Europeans) have the benefit of; and if disputes arise between them and their agents, who are in truth but agents, still they cannot bring that forward, it could not be supported.

983. Are the outrages that may have been committed either by or in the name of Europeans, in some degree attributable to the tardy and imperfect administration of justice by the civil courts in the provinces?—The courts certainly are so crowded and the business so much in arrear generally, that it has often happened, when there appeared no prospect of the decision of a civil suit being obtained within convenient time, that the European and his agents have taken the law into their own hands; but such occurrences could be readily provided against, by having natives, such as commissioners or ameens, dispersed through the country, when all such matters would be speedily settled.

984. Do you conceive that there is a good deal of venality among the native officers of the courts?—I do not think that there is generally, though at the same time I have no doubt that it does exist, its degree depending greatly upon the European officer's vigilance; but I account for it, and might even say apologize for it, in their very inconsiderable pay and hard work.

985. You have said, that you thought that a general code might be formed for the population of India of all descriptions; do you think that in place of having supreme courts at the presidencies, with one species of jurisdiction, and totally independent courts in the country, with another species of jurisdiction, it would be possible to frame a common system of judicature, to be acted upon in all the courts, both at the presidencies and throughout the whole country?—I should think it a matter of no great difficulty; it would imply a revision of the whole of the law, which I conceive would be easy. As for the criminal part, it would be extremely simple, and with respect to the civil, it would be done without embarrassment.

986. Do not you think that an adoption of any change of that kind would be facilitated by having a standing legislative body at the presidency, who might frame laws adapted to the occasions that might arise?—I think that a council formed of the government, and such individuals as compose the supreme court of judicature in Bengal, would be competent to form a code of laws well suited to the administration of justice in all its branches; but I should think that the Governor-general should always have a casting voice in every matter, to prevent the serious consequences which collision among themselves, or delay by reference to this country, might occasion.

987. You have stated that the courts are clogged with business; will you mention what is the description of causes that appears most to impede the discharge of business in those courts?—With reference to the period when I left India, the business of the courts was clogged chiefly by two causes, namely, various petty details that could as well be performed by natives, and summary suits for small amounts, which were first cognizable of necessity in the zillah court, then referred to the collector for report, and again brought before the judge for final decision when that report was received. The decision was after all but a summary one, and a regular suit was at the option of the party dissatisfied afterwards. The number of those suits was often so great and pressing as to induce the judge to devote his time to them;

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them; in consequence of which suits of greater interest and amount to other classes of the community were wholly neglected, and breaches of the peace often occurred in consequence; whereas had such suits been in the first instance rendered cognizable by the native commissioners in the interior as regular suits, they would have been decided earlier and more satisfactorily, and without waste of time to the judge. I remember, in a district of which I had assumed charge, and which may be taken as not an unfair sample of others very generally, there were on the file about 350 summary suits, some of four years' standing; these I suggested to the parties to withdraw and institute as regular suits before the native commissioners, where they were decided in a very short period: I found, moreover, that those which remained on my file were the worst, and as such best suited to a hasty superficial inquiry, which is the character of summary suits.

988. Was there at that time a considerable delay in bringing the cases of a more important nature to trial?—There was very great delay, and chiefly owing to the causes I have hinted; other causes also there were, as miscellaneous proceedings, which might have been equally well performed by natives, but the system of the courts and the regulations precluded the judge from relieving himself of most of this tiresome and lengthened detail.

ALEXANDER DUNCAN CAMPBELL, Esq. called in and examined.

Alex. D. Campbell, Esq.

989. WILL you state in what presidency you have served in India?—Under the Madras presidency.

990. State what judicial situations you have filled?—In 1818 I officiated for several months as Chief Magistrate at Madras, when I had charge of the police. I was also twice appointed a Judge of Circuit and Appeal in the provincial court for the centre division, once on the 9th March 1824, and subsequently on the 17th of June 1828; and when I left Madras, in February 1831, I held the situation of Registrar to the courts of Sudder Dewanny and Foujdarry Adawlut, or Company's supreme court at the presidency, at the period when it was proposed to abolish the Mussulman criminal law, and to raise materially the jurisdiction of the various native judicatures under the Madras government, both in the civil and criminal departments.

991. Are you acquainted with two letters, of which copies are now on the table, from the Madras government, in the judicial department, to the Court of Directors, dated respectively the 27th of April 1827, and the 2d of November 1830?—I am.

992. Will you state the nature of those letters?—The first-mentioned letter refers principally to the proceedings of the Madras government antecedent to the establishment of assistant judges, in the civil and criminal departments, at the Madras presidency. The last-mentioned letter contains the most recent modifications suggested at Madras, in the judicial system, consequent on the report of the finance committee in Bengal, regarding the expediency of reducing the expenses of the judicial department at the Madras presidency: it proposes the total abolition of the Mussulman criminal law, the raising materially the civil jurisdiction of all the native judicatures, the appointment of native judges, with the full powers,

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powers, both civil and criminal, vested in the zillah and criminal judges of our European courts, and a modified employment of the junior civil servants on their entrance into the judicial department; it also involves the abolition of the whole of the courts of circuit, and the establishment of seven commissioners to conduct not only the circuit duties, but to control both the European and native subordinate judicial tribunals, and also the police department under the magistrates of the provinces; and it is accompanied by a statement of the saving of expense likely to result from the proposed modifications: it also suggests the abolition of the existing mode of remunerating the native judicatures denominated *district moonsiffs*, at Madras, and a new mode of remunerating them for their services.

993. Do you know how far any of the suggestions contained in the latest of those letters have been or are in the course of being carried into effect?—I have in my possession drafts of the regulations, made by myself before leaving Madras, for carrying into effect the whole of the above-mentioned suggestions in the criminal department, marked from (A.) to (E.) Similar regulations were to have been framed in the civil department; but I left Madras suddenly, from extreme illness, and they had not been prepared at the period of my departure. Three native judges, with the full powers of zillah and criminal judges of the European courts, had been sworn in at the presidency before I left it; but since my arrival in this country, I have understood that the Bengal government revived the order existing during Lord Wellesley's time, for the transmission of all Madras regulations to the supreme government in Bengal before promulgation, and that the above-mentioned drafts were transmitted from Madras to Calcutta. I have not heard the result of that reference, but I believe that, in consequence, the proposed modifications have not yet been carried into full operation.

994. Had any of those three native judges who were appointed, entered on their functions before your departure?—One of the native judges, in the district of Soonda, on the western coast of the Peninsula, had been appointed considerably anterior to the other two, and had entered on and executed his functions for a considerable period before I left Madras.

995. Do you yourself concur generally in the expediency of the alterations suggested in the letter above mentioned?—I concur entirely in the expediency of all the suggestions submitted by the court of sudder adawlut, in their proceedings in question, with the exception of that part of them in which the court state that they do not consider the use of juries to be either safe or practicable; the remark is made by them as applicable to criminal trials before the *native* judges. My opinion is strongly in favour of the use of something similar to jurors on all occasions in criminal trials, both before the native and European judges, as an assistance to the European, and as a check on the native judge. It is a subject of great regret with me that the enactment made by the Madras government, in Regulation X, 1827, to introduce juries gradually under the Madras presidency, never has been carried into effect; the regulation has remained a dead letter, in consequence of the subsequent government disapproving of it.

996. Had no trial ever been given to it?—None whatever.

997. Has the punchayet system been tried in civil cases?—Yes, but without much success at Madras, in the *judicial* department.

998. To

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998. To what do you ascribe the want of success with which that experiment has been accompanied?—Most of the suits in India originate with the monied classes of the people who are generally the plaintiffs, against the ryots who are usually the defendants, as borrowers of money from them; and my impression is, that the native bankers find it more to their advantage to institute suits before a distant judicature, in order to induce speedy payment of their debts by their numerous debtors, than before a judicature close to the residence of the debtor. I also think that they consider it more likely that they can influence a single native judicature, than a punchayet. I am inclined to attribute to the above causes the rare resort in the judicial departments to the system of punchayet, which in India has more beneficially exercised its influence in disputes before they come to the length of a lawsuit, than after the parties have become so adverse to agreement as to resort to that extreme measure.

999. What do you mean by resorting to a more distant judicature?—I mean that when a punchayet takes place, it can be held on the spot where the dispute arises; but our native judicatures being fixed at particular stations, when a lawsuit occurs, it is necessary that the party sued should go to the residence of the native exercising judicial authority, which is frequently 30 or 40 or 50 miles from the ryot's home; and natives to whom money is owing find it often to their advantage, by harassing a single debtor with a distant journey, to bring many of their other debtors to a speedy settlement of their debts.

1000. Is the punchayet to which the last question refers a punchayet for the purposes of arbitration rather than for the purposes of deciding a suit which has once been instituted?—Not for arbitration, but for decision. My impression of the enactments of the Madras government, contained in Regulations V, VII, and XII, 1816, respecting punchayets, is, that on an agreement to refer the subject of the suit to decision, by both parties, a village punchayet may decide; or, in particular cases, by one party, a district punchayet may decide; but that the decision takes place by the members of the punchayet in the village or district where the dispute arises, their decree being enclosed in a blank envelope to the native judicature, whose duty it merely is first to assemble them, and then to carry it into execution. In particular cases, either party consenting may constrain the other to refer the matter to a punchayet; but whether it is a district or a village punchayet which is to decide, in these instances, I do not clearly recollect.

1001. Are cases which have been actually brought before the judge ever tried in his presence by the means of punchayet, upon the consent of the parties?—Judges have the power, under Regulation XXI, 1802, to refer disputes before them to arbitration; but when parties consent to refer suits to punchayet they need not travel to a distant European court. The native head of the village, or of district judicature exclusively, has the power to assemble punchayets.

1002. Then, in fact, a punchayet never stands in the shape of our jury for trial of causes?—Never. I have had considerable experience of the use of punchayets, as a *revenue* officer, in the Bellary division of the Ceded Districts, and found them exceedingly useful there in adjusting matters of dispute, both between the inhabitants themselves, and between myself, as the representative of the Government, and the ryots paying land revenue, as well as the merchants, who in that particular

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province pay a very heavy income tax. I have often found these parties resist all argument on the part of my native servants, as well as of myself, but immediately concede the point with cheerfulness when decided in favour of the Government by a punchayet, deferring to the opinions of their equals, though they opposed that of the government officers. In such cases, as well as in numerous disputes regarding village offices, such as the right to the privileges of the head of the village, or of the watchman or other village officers, punchayets have been most extensively employed by the revenue officers in Bellary; and I have scarcely ever found any difficulty in inducing all such parties to agree to that mode of adjusting these disputes. When native animosity increases to such a degree as to terminate in a suit at law, it becomes more difficult to reconcile the parties to this mode of adjusting the dispute.

1003. Do you conceive that any advantage would accrue by enforcing the trial by punchayet in cases of a certain value or amount, not leaving it optional to the parties?—I think it would tend to degrade that tribunal in the public estimation to make a reference to it compulsory; but in very trifling cases I do not think that it would be attended with other disadvantages. I should prefer, however, something of the nature of a jury, to a punchayet; natives, in such bodies, acting much more satisfactorily under the supervision of a respectable officer, particularly of an European, as in the cases I have mentioned in Bellary, than when left without superintendence. It is not necessary that the European functionary should in the remotest degree influence such decisions. But in a ryotwar settled district, an efficient officer of this kind is rather the organ of public opinion than the representative of the Government; and a knowledge that their decree, if unjust, will expose them to public odium, which will find a vent through him, operates as a great check on such punchayets.

1004. Of what description of persons are the members of the punchayet commonly composed?—In the ryotwar settled districts, such as Bellary, there are constantly in attendance at the office of the collectors and magistrates, many hundreds, sometimes thousands of the ryots, particularly at the period of the annual settlements, when occasionally 10,000 or 12,000 people of that description may be congregated together at the same time. The parties themselves are left to select out of those bodies whom they choose, and the collector generally nominates one of the leading agricultural inhabitants, known to be a person of good sense and discrimination, care being invariably taken to ascertain from both parties that he is one to whom neither have any objection.

1005. Supposing a case between a lender of money and a borrower of it to be decided by punchayet, of what description of persons in that case would the punchayet be composed?—The punchayet would consist, in all probability, of two wealthy monied men, chosen by the native banker; two respectable cultivators, chosen by the ryot; and a fifth person, of the description above mentioned, selected by the collector. A great deal, in a punchayet, depends upon the proper selection of that fifth person; the other parties enter into violent disputes, each as partizans of the person who has chosen them, and the fifth acts as the moderator to bring both to reason. Some of the decrees drawn up by punchayets at Bellary are admirable specimens of native intelligence, seldom equalled by some of our own European decrees.

1006. Are

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1006. Are the members of the punchayet paid for their labour?—Never.

1007. Are they sworn?—They are not sworn; and even intricate disputes in the revenue department, such as I have described, are generally settled within a few hours, or at least in the course of a single day. The dispute must be exceedingly intricate indeed if the decision extends beyond that period.

1008. Is there any limitation to the amount of the suit that is subject to this mode of settlement?—I think not; where the parties agree to settle a dispute by punchayet, there is no limitation of amount.

1009. Is the decision of a punchayet final?—Decidedly so; subject to no appeal, except on proof of the partiality or corruption of the members.

1010. Is the decision of causes by punchayet an ancient custom in the provinces under the Madras presidency, or of recent introduction?—An exceedingly ancient custom in those parts of the presidency with which I am best acquainted, namely, the Ceded Districts; and I apprehend that it will be found to have existed all over the Madras territories, though the resort to it may have been more or less encouraged in different provinces, and it may more or less have fallen into disuse.

1011. Are you aware whether the practice of torture by the native officers, for the purpose of extracting confessions or obtaining evidence, has been frequently resorted to?—Under the native governments which preceded us at Madras, the universal object of every police officer was to obtain a confession from the prisoner, with a view to his conviction of any offence; and notwithstanding every endeavour on the part of our European tribunals to put an end to this system, frequent instances have come before all our criminal tribunals of its use. I recollect a very strong instance of this kind noticed in my own report as judge of circuit; it was in the Cuddapah district, where a native was hung by the heels from the beam of a house. I also recollect a brother judge, on the same bench with myself, mentioning to me very extraordinary means of torture complained of by certain prisoners, in which, with the view of eluding all discovery, the native police officers were accused of inserting heated bougies into the penis of the prisoners; and there is an universal anxiety on the part of the European judicial officers of the Madras government to guard strongly against even well-authenticated confessions, unless most fully corroborated by other evidence, on the ground of the great tendency of our native police officers to resort to this means for conviction. Even where ample proof otherwise exists, it is very difficult to counteract the tendency of our native police officers to induce confession on the part of the prisoners; indeed, we have not yet eradicated from the minds of our native agents that such means of proof have no weight with us.

1012. In criminal trials, is it the practice of the judge to examine, before a confession be given in evidence, whether it has been made under circumstances of fear, or under circumstances of intimidation or torture?—With our courts it is the universal practice to lay before the judge of circuit who tries the prisoner, the whole of the depositions anterior to the trial, including of course any alleged confessions; those confessions are, by regulation, required to be attested by two witnesses, and those witnesses are universally examined; even when they swear that such confessions were freely and voluntarily given by the prisoner, the tendency of our

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European tribunals is in general to place little confidence in such evidence, on the ground of the tendency of our native agents of police to extort confessions.

1013. May the agents of police in whose custody the prisoner is taken be the attesting witnesses, or must the witnesses be persons who are unconnected with the police?—Our code originally prescribed that the witnesses who attest confessions should be persons totally unconnected with the police; the consequence was, that the police officers called upon many of the more respectable classes of the community to attend whilst such confessions were given. But those persons were so harassed by long journies, in attending first before the European tribunal which alone is competent to commit the prisoner, and subsequently before the distinct European tribunal which alone is competent to try the prisoner, that they evinced extreme aversion to this odious duty, and many even perjured themselves and declared that they were not present, though it was fully proved that they were so, merely to avoid performing similar duties thereafter. The consequence has been, that the original order was so far abrogated, that all police officers above the rank of a common peon were admitted as witnesses to such confessions, under Regulation V., 1819.

1014. Is not torture also resorted to for the purpose of getting evidence as well as confessions, and for extorting bribes?—I do not think that it is generally resorted to for such purposes, though occasional instances may have occurred of such gross abuse. On reference, however, to my report as judge of circuit, I observe that, in the instance at Cuddapah above mentioned, I recorded my opinion thus: "Aggravated, atrocious and reiterated torture, accompanied by murder, had taken place, in order to induce false evidence, and eventually perjury, against innocent individuals unjustly accused of robbery."

1015. Is there not some general term by which it is described; kittee, for instance?—Kittee is the hand-torture.

Mercurii, 18° *die Aprilis* 1832.

The Right Hon. ROBERT GRANT in the Chair.

ALEXANDER DUNCAN CAMPBELL, Esq. called in and further examined.

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1016. WILL you explain the kittee, or hand torture, mentioned in your last examination?—The kittee consists of a piece of bamboo split at one end, the other remaining shut. The hand is introduced at the open end, which is then closed upon it. I believe it was in partial use under the native governments which preceded us in the Madras territories, both as a means of inducing confession in police matters, and payment of arrears of revenue by defaulters. Applying it to the hand, placing a person in the sun with a stone on his head, and sometimes with the trigger of a matchlock shut upon his ear, were means resorted to by the officers

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officers of the native governments, for the purposes above mentioned, which, though entirely discouraged by us, may still partially prevail where the European authority is not so efficient as to check such abuses on the part of our native agency. In revenue matters it has been very generally discontinued, in consequence of the enactments in our Regulations of 1802 rendering the native officer subject to prosecution in the courts for any such measure. I only recollect one instance of its use by a native revenue officer subsequent to those enactments, which occurred in the Bellary district during the administration of my predecessor there, who in consequence of the native officer being convicted of that offence, removed him from his situation; my impression is that he considered him, otherwise, a very able native agent.

1017. How far do you think it would be proper to invest the Governor-General and the other governors at the different presidencies with the power of selecting natives, either at the presidencies or in the interior, to act as justices of the peace in all cases for the preservation of the public peace, or for the purpose of committing persons accused of offences for trial?—I think it highly desirable that such a power should be vested in the local governments. But in making any enactment on this point, Parliament should distinguish the powers vested in the district magistrate of the provinces, by the general enactments of the local governments, over the natives only, and the distinct powers vested in the same European officer, as a justice of the peace, by the statute or common law of England, over Europeans alone. The powers of committal and punishment vested in him in the former capacity have, in the Madras territories, been most extensively conferred on the native officers under him. In his latter capacity, he cannot depute his powers. Indeed, in India the powers exercised by justices of the peace are of two descriptions; the one by the justices in the interior over Europeans exclusively under the English law, the other by justices at the presidency over both natives and Europeans partly under the English law, partly under the *presidency* laws enacted by the local government. I am of opinion, that with regard to the latter description of cases, viz., those at the presidency, there are many natives to be found amongst those there resident who are perhaps more able even than the European justices to decide on the cases of natives, and that it would be expedient to make it imperative on the local governments to select native gentlemen at each presidency to sit with the European justices on the trial of such cases. With regard to the committal or trial of *Europeans* by natives, I think it involves, in a considerable degree, not only the feelings of Englishmen, but a political question connected with our peculiar government in India; and I doubt whether we should not lower ourselves in the estimation of our subjects, if we rendered cases involving any high offences by Europeans cognizable by the natives *exclusively*. In such cases the Europeans accused would also insist strongly on the right to trial by jury; and I conceive that the preferable mode would be to throw such cases, as far as possible, into the hands of Europeans, and if vested in the natives at all, that they should act as assessors with the European authorities, not independently of them. A native judge would feel perhaps as averse to try or commit such Europeans for trial, as the European would to submit to his authority, on account of the accused belonging to the caste of the Government. Independently of this, the notions which the natives entertain of the law of evidence are in many respects

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respects very different from ours; and the natives would, and do now daily, act upon evidence which any European authority would deem quite inadequate to justify the determination to which the native authority, acting without European assistance, would and indeed does come.

1018. The last question did not contemplate the trial either of Europeans or of natives, but simply that preliminary proceeding which consists in the apprehension of persons accused of offences, in committing them for a more regular trial; the question is rather how far natives would be fit for that preliminary sort of jurisdiction, than how far it would be proper to commit the actual trial of European offenders to their cognizance?—I consider natives perfectly competent to exercise all the powers of investigating criminal offences even by Europeans, previous to commitment; and all the higher native police officers in the Madras provinces do now in fact exercise such authority, in the case of European soldiers committing murder or other grave offences within 120 miles of the presidency, where no justice of the peace is present. The great difficulty with which a native has to contend, in conducting such duty well, consists not in any incompetency on his part, but in the peculiar laws of our own country regarding Europeans. They are at present subject only to the British criminal law, if British born subjects; and the higher courts before whom the case may come might feel greatly at a loss in charging a grand jury regarding the case, or in the event of the jury finding a bill, in the trial of the case itself, if it involved anything of the nature of a confession, or if the proceedings of the native tribunal were defective in that tenderness towards a prisoner, or in any other rules of evidence, which most justices of the peace understand to be essential for correct proceedings on their part, with a view to ulterior proceedings in a higher court.

1019. Supposing either at one of the presidencies, or in the interior of the country, an European to commit a serious offence in the face of day, and no European justice of the peace to be immediately accessible, and such European to be taken before a native committing officer, what power has such native officer of taking cognizance of the case, of inquiring into the facts, and of placing matters in train for the trial of the offender by the supreme court of judicature?—The officers of police *at the presidency* possess no power whatever, except that of arrest; they cannot take any written depositions whatever; and the European authorities exclusively are competent to commit either natives or Europeans for trial before the King's supreme court there. But in the Madras *provinces*, the superior native officer of district police has cognizance of cases, in the same manner as a justice of the peace in this country; he punishes petty offences by natives, of his own authority, and for higher offences commits natives for trial before the higher courts. As regards Europeans, however, his duty is confined to holding an inquest on the bodies of any deceased persons, to taking written depositions from all parties who have any knowledge of the matter, and to forwarding the case in this shape to the European justice of the peace, who, according to the English law, as explained in Regulation IV., 1809, of the Madras code, has exclusively the power of committing European British subjects for trial. In all such cases, on the matter coming before the European authority, whether at the presidency or in the provinces, new depositions must be taken *ab initio*, and the whole matter must

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must be treated as if it had come before the European authority in the first instance.

1020. Do you see any objections to some regulation by which, under whatever restrictions, a power of committal for trial should be given to native officers selected for that purpose?—I see not the smallest objection, if such natives possess a competent knowledge of the English law, or if the law to which the accused is to be made amenable is so altered from the English law, as to be clearly understood by the natives appointed to exercise that authority.

1021. It is understood that justices of the peace have a conclusive jurisdiction in certain criminal cases of a lower kind, is that the fact?—Justices of the peace *in the interior*, under the Act of Parliament passed previously to the last renewal of the Company's Charter, possess power of deciding petty cases of assault committed by Europeans. *At the presidency*, justices of the peace possess the same authority over Europeans; but in addition to that, further authority is vested in them, under regulations of the local governments, drawn up for the good government of the metropolis of each presidency, and registered as the law requires in the King's supreme court. Their jurisdiction, in this respect, extends both over Europeans, and the natives at the presidency subject to the criminal jurisdiction of the supreme court.

1022. Are you of opinion that there should be a power in the governments to select natives who should be invested with those functions which you have described, the exercise of such functions extending both to natives and to Europeans?—I think that, *at the presidency*, it is exceedingly desirable to confer such authority on native gentlemen, both as regards Europeans and natives; such native gentlemen acting as the Europeans now do, in conjunction with their other brethren of the bench, including Europeans. I myself have presided as superintendent of police over the bench of magistrates at Madras, and the cases coming before that tribunal consist of an exceedingly numerous class of petty offences, respecting which the whole of the evidence is generally that of natives exclusively. That bench also possesses authority to assess the town of Madras for the purpose of lighting the town, and of the police; and I consider the native gentlemen of the place more competent than ourselves to decide on native testimony, and much more interested than we are in the just levy and due application of the funds, to which they themselves largely contribute. It is their exclusion from a seat on the bench of the magistrates *at the presidency*, which I consider the higher classes of the native community at all our three presidencies to view as a severe grievance.

1023. Supposing natives to be made eligible to the situations in question, should you conceive that such eligibility ought to be confined to natives unconnected with government, such as merchants or landholders, or that it should be extended even to those who are dependant upon our government, or officially employed under it?—I do not think that any class of the natives should be excluded; but I conceive that, practically, the government never would thus employ any of the native officers under themselves; for all natives in public offices have too much to do to attend to this duty. The selection should not be confined to the class of landholders, few of whom exist at some of the presidencies, but ought to be made generally from the resident native gentry of the place, possessing most influence, and of the highest

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highest character in the estimation of their own countrymen. These persons are well known to all the local governments of India.

1024. Would not such a regulation have a tendency to raise the character of the natives at the presidency?—I think it calculated to raise the character of the natives at the presidency, which is also the place of all others, where it is of the greatest importance that their character should be raised.

1025. How far should you think it expedient to extend this privilege to native gentlemen in the provinces?—I doubt the expediency of extending it to them in the provinces, because there the principal native gentry are the resident landholders, against whom principally most complaints are made by the lower classes of the people; and as they seldom see any European, except those in the King's or Company's service, they would shrink from the performance of such a duty, over any except the very lowest classes of Europeans, including the European soldiery. I have already alluded to the questionable policy of such a measure. If a more extended intercourse of Europeans with India were established, and the native gentry in the interior became better acquainted with that class of people than they now are, perhaps the present objections against extending such a measure to the provinces might, so far as Europeans are concerned, gradually disappear.

1026. Then, on the whole, are you of opinion that the experiment of extending the functions in question to the natives should, in the first instance, be tried at the presidencies?—I think that it should be tried, and would there work well.

1027. You have been a good deal examined before the Public or Miscellaneous Committee, on the subject of establishing a legislative council in India; does it occur to you to give any information or opinion upon that subject, which you have not stated before that Committee?—I do not think that I have anything material to add to my former evidence on that subject.

1028. Do you think that the relaxation of the restrictions which a good deal prevent Europeans from entering into the interior of India and forming establishments there, would in fact be attended with the effect of the greatly increased settlement or residence of Europeans in the provinces?—I am inclined to think that it would increase the number of settlers, particularly under the Madras presidency, where the restrictions against the residence of Europeans, not in the service, have been more rigidly enforced than elsewhere, and where I think European capital and skill would find in many cases very useful and beneficial employment; but I do not think they would colonize or settle permanently in India.

1029. Would the introduction of Europeans, as competitors with the natives, in the different branches of trade, agriculture or manufacture, operate upon the whole favourably for the natives in the interior?—Decidedly so; I can contemplate no instance of their operating otherwise. I speak with reference to the few cases in which Europeans have found admission into the Madras territories.

1030. Would the immediate effect of a successful competition be injurious to those who were worsted?—There would be hardly any competition. There could be none with the great mass, viz., the lower agricultural classes of the natives, for no European could, with success, attempt competition with them, nor with the more numerous portion of the other natives employed in actual labour or in the minor branches

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branches of trade, on account of the much cheaper rate at which natives live, compared with that of the expenses of the lowest class of Europeans, whose wants are much greater in India than in their own country. The same cause renders it unlikely that any European artisan could successfully compete with the Indian of a similar rank. The great want at Madras is want of capital, both amongst the agriculturists and the traders of the country. The whole of the country is in this respect very much exhausted; and I think that the successful class of European settlers would be those who might employ a large capital in the improvement of the irrigation, or of the agriculture, of the country, or in extensive trade. This would introduce a new set of men into the Madras provinces, distinct from any considerable class of the natives known there.

1031. Do you mean to say that neither native labour on the one hand, nor European capital on the other, would find any competition to cope with it?—Yes, that is my general impression; I also think that European invention, skill, enterprise and superior ability, would lead many of the few natives who do possess capital to join their capital with that of Europeans, more to the benefit of themselves than it is now employed.

1032-3. What natives do you think would contribute their capital in that manner?—The few native capitalists at the presidency, and gradually those in the interior also.

Veneris, 29° die Junii, 1832.

The Right Hon. ROBERT GRANT in the Chair.

JAMES MILL, Esq. called in and examined.

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James Mill, Esq.

1034. HAVE you considered the present state of the law in India, and the provisions which have been made for its administration?—In some degree, I have.

1035. What is your opinion as to the practical effect of the system, and in what degree is the administration of the English law by the supreme courts in India necessary or advantageous?—It has always appeared to me, that two systems of law in any country were a thing of itself objectionable. As far as possible, the people should have but one set of rules to govern their conduct, and those rules as simple as possible, in order that they may be more perfectly known. Two systems of law imply, besides complexity, the expense of two judicial establishments, one for each. The inconvenience, I conceive to be exceedingly enhanced, when the two systems are liable to come on the same ground; that is, when a distinct line is not drawn between the classes of individuals subject to each. In India the limits of jurisdiction have been exceedingly ill defined. The jurisdiction of the supreme courts is extended over the natives to a great, and by no means a well defined degree, whence it happens, that the same persons are subject to two different

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and highly dissimilar systems of law; and as they are a simple and ignorant people, guided by what they see and hear, and with very little reflection, the confusion thus created in their minds may be easily conceived. The history of the introduction of English law shows that the circumstances which originally called for it have entirely gone by. When it was first introduced, we had no territorial possessions in India, and no subjects: the English were a small number of individuals allowed to establish themselves in the territory of a foreign sovereign: established in a country where the provisions for the administration of justice were most imperfect, the English found themselves exceedingly at a loss: not only questions of property arose among themselves, but a great demand was felt for the suppression and punishment of crimes. It was not considered expedient to have recourse to the tribunals of the country, more especially in criminal cases, both because trust could not be reposed in the equity of the sentence, and because punishments were barbarous; they therefore obtained from the Government at home a charter for the administration of justice amongst themselves, and in the circumstances of that time, the expediency of administering English law, there being no others than Englishmen to administer it to, cannot be doubted; but the nature of the case was totally changed when we became the sovereigns of those territories, and established tribunals of our own for the population contained in them. We, however, continued the establishment for the administration of English law to the small number of Englishmen, after the tribunals of the country were ours, in the same manner as we did when the tribunals were the tribunals of a barbarous government, and when we could have no confidence in them. It appears to me, that the purposes which those institutions were intended to serve, not now having any existence, there is no occasion for them. The tribunals of the country are no longer the tribunals of a barbarous sovereign, but our own tribunals; and therefore to maintain a special set of tribunals for a small number of individuals mixed with the immense population of the country, appears to me in the first place needless, and on account of the inconvenience with which it is necessarily connected, highly impolitic.

1036. Are you not perfectly aware that the supreme courts of judicature, as now constituted, were introduced under circumstances somewhat varied from those which you have described, as the circumstances under which the introduction of the English law took place; that they were introduced after we acquired territorial dominion, and with the special view of checking abuses, or supposed abuses, committed under the Company's government; advert to that view of the subject, and consider whether it does, in any and what respect, affect your former answer? —I am aware that the supreme courts, as now constituted, were introduced subsequently to our obtaining the territory. The courts were established on the present footing, partly with the view of improving the administration of English law, and partly under the supposition now mentioned, that they would afford security against injuries committed by the local government. The courts of English law can interfere with the acts of the Government only when illegal acts have been committed against Englishmen. I am not aware that the history of them affords any great experience of their utility in that respect; the instances are few, I think, in which the Government have been charged with injuries to Englishmen, for which the supreme courts could afford redress. Besides, it appears to me that an Englishman residing

residing in India will always have abundant means of making known his complaints, and urging his claims to redress, if supreme courts were put out of existence.

1037. Do you think that any inconvenience would arise from the doing away with the supreme courts, from this circumstance, that these have now been established for some time, and there are considerable communities which have grown up at the different presidencies, who have been habituated to this jurisdiction, and they are generally supposed to be content with it?—It may be that the change of system would be felt as an inconvenience at first, because a change in anything to which people have been accustomed, especially in what touches their interest so strongly as a system of law, disturbs their thoughts a little when it first takes place. But that disturbance, I think, would speedily wear off, and after all, is nothing of an inconvenience compared with that which seems inseparable from the existence of two exceedingly different and conflicting systems of law in the same country.

1038. It has been alleged by several persons that the natives do, in fact, feel a great confidence in the supreme courts, and a confidence derived principally from the notion that it is a sort of check on the Company; how far do you assent to their opinion?—The natives of Calcutta and of the other presidencies have a confidence in the supreme courts on two accounts. In the first place, they are under the superintendence of a jealous and intelligent public; a good ground of confidence always. That, however, would not be excluded under any arrangement by which the present courts would be superseded. I know not any ground of confidence which, in such a case, would be taken away, except the idea that the supreme courts rest upon an authority superior to that of the Government. Now it appears to me, that this last ground, so far from being an advantage, is altogether an evil, and of great magnitude. The existence of a double authority in the same country of two independent authorities, can never lead to good, must always act unfavourably on the willing obedience of the people, which is the strong arm of the government. It never can be reconciled to common sense, that an authority should exist in any country pretending to be superior to that government to which all must pay obedience, and to which all look up for protection. I think, therefore, the existence of courts upon a footing different from the will of the government of the country, is altogether to be avoided; and that, even if it were deemed expedient to maintain courts for the administration of the English law for Englishmen, it would be a most important improvement to make the commission of the judges run in the name of the Government rather than in the name of the King. The same independence might be secured to them in the one case as in the other; they might be equally appointed for life, and responsible for their good behaviour to the same authorities.

1039. Do you think any advantage is obtained by having courts in India which are in sympathy with the judicature of this country, and the judges of which are supplied immediately from the body of English barristers?—With regard to the mass of the people in India, I do not see how that circumstance should have any operation at all. With regard to the Englishmen, they may be supposed to be attached to their own laws, and possibly enough would have objections to be deprived of what they call the protection of English laws. But that is a feeling which, if substantial security were afforded them by other arrangements both for

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their properties and their persons, I think would speedily give way, and at all events ought not to stand in the way of arrangements that are of importance to the good government of India.

1040. The question being in what manner the objects of good government are best to be secured to the natives, is it of no advantage to them that the supreme courts exhibit in their capitals a standard of judicial administration which is asserted by an authority paramount to that of the Company, and to its practice the Company's courts may in some degree conform their own?—I question very much the idea that the operation of the supreme courts has had any influence in ameliorating the proceedings of the native courts, not only because the two systems are so exceedingly different, but because the intercourse and acquaintance with the proceedings of the supreme courts are extended to so minute a portion of the population and their judges. I may add, that in my opinion the English courts afford more examples of what is to be avoided than what is to be followed in tribunals erected in India.

1041. Do you conceive that at the presidencies an assimilation could be easily made of the English law, which prevails there almost entirely, to any system of law which should also be administered to the natives in the provinces?—The change I should contemplate at the presidencies, in the first instance at least, would be a change with respect to the judicial establishment and the form of procedure, rather than in the law itself. In point of fact, what the supreme court now does is to administer English law to Englishmen, and native law to the natives, though both according to the forms of the English courts. Now, the difference in my contemplation would be, that English law would still be administered to Englishmen, and the native law to the natives, but according to the forms that might be adopted as best applicable to the courts of the country generally. The questions which fall for discussion in courts of law generally, and in India with few exceptions, come under the two great heads of inheritance and contract. As far as questions of contract are concerned, the leading principle of law is the same everywhere, the interpretation of the will of the contracting parties. With respect to inheritance, it is the uniform principle of all the tribunals in India to attend to what is the law of the party before the court; to administer the Mahomedan law of inheritance where the party is a Mahomedan, the Hindoo law of inheritance where the party is a Hindoo, and the English law of inheritance where the party is an Englishman; nor do I see what should hinder the same thing from being done with correctness under the change which I contemplate.

1042. State your opinion as to the efficiency of the country courts, as at present established?—I conceive that as at present established, they labour under considerable defects. When courts for the administration of law to the natives were first established by our government in India, they consisted of three grades, the Zillah Courts, the Provincial Courts, and the Sudder Adawlut; all three were courts of original jurisdiction, but rose above one another in the amount on which they could adjudicate. The zillah courts, of which one existed in each considerable district, had jurisdiction of all causes up to a certain amount; the provincial courts, each of which included the local limits of several zillahs, had original jurisdiction from the point at which the zillah courts stopped, up to a considerably higher amount; and

and the sudder court, the jurisdiction of which included the whole country, had original jurisdiction in all the higher sums; the provincial courts were, besides, courts of appeal from the zillah courts; and the sudder adawlut was the court of appeal from the original jurisdiction of the provincial courts: such was the provision for civil judicature, both original and appellate. The provincial courts had confided to them, besides, the entire criminal jurisdiction of the country, with the exception of the duties called magisterial, imposed on the zillah judges, including a portion of criminal jurisdiction, analagous to that possessed by the justices of the peace in England, acting singly. Experience discovered, that the establishment, as thus formed, was, in point of extent, unequal to the business which was to be performed. The tribunals of all the grades were unable to get through with that portion of the business which fell to their share. To supply the deficiency of the zillah courts, natives were employed as judges, to decide causes of a small amount. There were then four grades of tribunals of original jurisdiction, native judges, zillah courts, provincial courts, and sudder dewanny adawlut, rising one above another by the amount of the sums for which they could adjudicate, and the one immediately above always acting as an appellate court to the one below. The use of the native judges, the amount for which they could adjudicate, has gone on increasing, till by a recent decision of the government, they are to be intrusted with nearly the whole jurisdiction in the first instance; they are to try all causes up to the amount of 5,000 rupees; and causes in India for sums exceeding this are comparatively few. In the meantime it was also found that the business of the provincial courts, including criminal jurisdiction, with the portion of original and appellate jurisdiction in civil matters assigned to them, was much more than what they were able to accomplish. In 1829 the resolution was adopted of appointing functionaries, called commissioners of revenue and circuit, who among other duties were intended to exercise the whole of the criminal jurisdiction which had belonged to the provincial courts; that scheme proved a failure from the beginning; the commissioners were too few for the duties with which they were charged. A resolution has been recently adopted to relieve those commissioners from the whole of their criminal jurisdiction, that is to say, the judicial duties which had been assigned to them; and in consequence of this, a great change in the whole of the judicial establishment has been resorted to. The jurisdiction in the first instance has been confided to native judges up to 5,000 rupees; and the zillah judges, being thus relieved of almost the whole of their original jurisdiction, are to have the criminal jurisdiction of the country. The system therefore will stand thus: the civil jurisdiction in the first instance, almost wholly in the hands of the native judges; the zillah judges to be judges in appeal from the native judges; the sudder adawlut judges in appeal from the cases decided by the zillah judges; and the zillah judges, besides their original and appellate jurisdiction, to have the criminal jurisdiction entirely; it being part of the plan, that the provincial courts should be abolished.

1043. In what respect might that system be considered equal to its objects, and in what respect deficient?—I think it is much to be feared that an amount of duty beyond what they will be able to accomplish, is assigned to the zillah judges. They are to receive appeals from the native judges, who must be very numerous; they are

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are to have upon their hands the criminal jurisdiction of their districts, and besides all this, a portion of original jurisdiction, viz. in the higher sums reserved to them. One of the most defective parts of our Indian system has always been that of appeal. It appears to me that the correct notion of appeal has not been kept in view: one error, I think, has consisted in giving the business of appeal to courts the principal part of whose time and attention was absorbed by judicature in the first instance. There appears to me one obvious and great advantage in courts for the business of appeal exclusively, and others for original jurisdiction exclusively, and that the two species of jurisdiction should not be joined. A still greater error has been committed in India, by an incorrect notion of the real business of appeal. Courts of appeal acting as such have considered it competent to them to take new evidence, by which in reality their functions ceased to be those of an appellate court, and became a new trial, from which trial of the same cause only by another tribunal, there was in reality no appeal at all. I consider the objection to the taking of fresh evidence in appeal as quite radical: besides its being in fact a decision without appeal, it interferes with other advantages of great importance. If you confine the proceedings on appeal to what is substantially appellate judicature, you may always have your appeals brought before the best tribunals, because nothing being submitted to the court of appeal but the pleadings and evidence, there is no occasion for the attendance either of witnesses or the parties; and the distance of the appellate court from the abode of the parties is therefore a matter of indifference.

1044. Would you think it advantageous, in cases where fresh evidence arises in the appellate court, to send back the cause for trial to another court?—The complaints which come before the appellate court must at the utmost be of three kinds: the appellant complains either that evidence which ought to have been taken has not been taken, or that the evidence taken has not been duly weighed, or that the law has not been properly applied. Now with regard to two of these questions, namely, whether the evidence has been properly weighed and the proper decisions come to, and whether the law has been properly applied, the appellate court is competent to decide them upon the mere view of the record. If the complaint should be, that evidence which ought to have been taken was not taken, the proper course for the appellate court is to send the cause back to the original court, where justice seems to require it, with an order to take the evidence and pass a fresh decree.

1045. In both these cases, would it not retain its real character of an appellate court?—It would do so, confining its functions expressly to the appellate business.

1046. You were proceeding to state the defects of the system as last established in India in the native courts; have you any further remarks to make upon that head?—Another of the defects of the existing courts has been their system of procedure. With a view to avoid prolixity and complication of the pleadings in English law, it has been attempted to confine them to two instruments, the plaint and the answer, and to confine them to the setting forth of material points only. But the business being left to the management of ignorant parties and their ignorant advisers, it rarely happens that the real point in dispute is elicited or an issue joined, and the case comes on for trial before the judge with little or no preparation: the parties seldom know to what points evidence will be required. The attendance

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of numerous witnesses, the great distance they have to come, the uncertainty when their cause will be heard, and the necessity of a long and expensive attendance, constitutes such an obstruction to the business of justice in India as has rendered it almost nugatory with regard to a great proportion of the people. Another objection of mine to the courts in India is, that they have been established upon the principle of one sort of courts for sums of small amount, another sort of courts for sums of higher, the best tribunals for the highest sums, the worst tribunals for the lowest; declaring, in fact, that more care is due to prevent wrongs done to the rich than wrongs done to the poor. The opinion which has obtained but too generally, appears to me most erroneous, that suits for the small sums are suits of the least importance. I think, in point of importance, the reverse is the right order; and I am not sure that the causes for small sums are those which it is the most easy to decide.

1047. Why do you think they are not the most easy to decide?—I do not mean that they are apt to be the most complicated, but that it is most difficult to provide security for the fair and honest decision of them: the rich man can make a noise, and will be heard if he is wronged. The case of a rich man creates attention, that of the smaller sums escapes observation. The great difficulty in India, where there is little aid from publicity, is, I fully believe, in securing honest decision for the smaller sums. Another point on which I think they have erred in India is this, that when they found the number of tribunals too small for the business to be performed, they have so long persisted in forming tribunals with more judges than one. A single judge can at all events get through with a greater amount of business than several judges sitting together, because no time is lost in hearing one another; and there are strong reasons for believing that the securities even for good judicature are greater in the case of a single judge than when the judicatory is more numerous.

1048. Can you suggest any and what improvement in that system, directing your attention first to the judicial establishment?—In India there is a necessity for numerous tribunals, because if justice is not brought near to the poor ryot in India, he is denied access to it altogether; it is therefore not a matter of choice but necessity, to confide judicature in the first instance very extensively to the natives. It has at last become a prevalent idea, that the best arrangement would be to confide judicature in the first instance entirely to the natives, reserving the business of appeal to Europeans. The supreme government in India have now proposed to go very nearly to that extent, confiding the trial of all causes up to 5,000 rupees to native judges. When they had gone so far, I do not see why they should not have gone a step further, and have simplified the system, by confiding jurisdiction in the first instance wholly to the native judges. I confess in the mental state of the natives at present, I should have been afraid to have gone so far; but if they are competent to 5,000 rupees, they are also competent to all the rest. We have however the means, I think, of providing a very considerable security beyond what has been proposed by the Bengal government, against the defects which cannot but be anticipated at first in the judicature of the natives judges. According to my idea of appeal, we should have a temporary resource of a very important kind in the zillah judges, to whom I would give concurrent jurisdiction with the native judges. I think there should be only one appeal from any court; and there being but one appeal

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it should always go to the best tribunal. The best tribunal they have in India is the sudder adawlut; I therefore think the appeals from the native judges, instead of going as now to the zillah judges, should go to the sudder adawlut directly: such alteration would then be necessary in the sudder adawlut as would enable them to discharge the business promptly. I consider it of the essence of appeal, and that upon which a great portion of the benefit of it depends, that it should be decided promptly. If the business of appeal be as simple as I conceive that it is, there would be no objection to appeals going to Calcutta from all parts of the presidency, even the most distant; because the proceedings before the original court might easily be transmitted by the post. By going to Calcutta they would have two first-rate advantages, that of the best judges, and that of the best public. The judges of the sudder adawlut should sit separately, each judge deciding as many appeals as in his power, the number being sufficiently increased to get expeditiously through the business. As one of the uses to be derived from courts of appeal, a use of peculiar importance where local courts are numerous, the law ill established, and the qualifications of the judges not high, is to secure uniformity in the law, an additional and imperative reason thence arises from the presence of the appellate courts on the same spot.

1049. Would it not be difficult to transmit the legal documents to so great a distance?—When papers are to be transmitted by the post, whether the distance is 100 or 500 miles is very immaterial. The proper arrangement, I think, would be that the judges should all sit in one hall of justice, but that each should have his separate apartment open to the public, and that only when a doubtful question on a matter of law arose, they should deliberate and decide in common.

1050. What do you think of the suggestion, that there should be two sudder adawluts, one for the Lower and another for the Upper Provinces?—I should prefer having the appellate tribunal at Calcutta, because the inconvenience of transmitting documents the additional distance is not material; and the public at Calcutta is so much superior, as to be an advantage of the greatest importance. For the sake also of a more perfect uniformity in the decisions of the judges, and of course in the law, they ought to be all on the same spot. As I have now described it, we should have a judicial establishment exceedingly simple: tribunals of native judges for original jurisdiction in all parts of the country, and a tribunal of appeal at the Presidency.

1051. Do you conceive native judges could be intrusted with exercising their functions, without the presence of any European judge?—The native judges are much less fit for the trust to be reposed in them than is to be wished, but there is no remedy; there are no means of having Europeans with them, and we must look out for other securities, and provide the best we can. One to which I have as yet only alluded, would be the concurrent jurisdiction of the zillah judges. As, according to my plan, they would be relieved of all the jurisdiction, both civil and criminal, now assigned them, their whole time would be at disposal, and I would retain them as judges with original jurisdiction, the same as the native judges, giving the option to the people of going before either; a test would be thereby immediately afforded of the degree of trust reposed by the people in the native judges, and a greater check would be thereby applied to them, than by anything,

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in addition to the appeal, which I think we have the means of providing. Something might also be done by the appointment of assessors to the judge, who might be chosen something in the way in which we choose a jury, and would act as a sort of public.

1052. You have as yet suggested no observations with regard to the administration of criminal justice; will you state any observations which occur to you upon that subject?—The business of criminal judicature has generally been treated as more difficult, or at least it has been thought that its errors required to be more carefully guarded against than those of civil judicature. But I doubt whether it is an opinion which is well founded; criminal judicature may be considered as more simple than civil, as really requiring less discrimination and acuteness of mind than a large proportion of civil cases. The injury liable to be sustained by bad judicature in civil matters is often more serious than in penal matters; setting aside the cases of the higher punishments, particularly those implying irremediable injury. If then I am right in this my opinion, that the business of penal judicature is to the full as easy as civil judicature and that it is not more difficult to take securities against the evils liable to be incurred by bad judicature in the one case than the other, there is no reason why the judges to whom the whole of the civil jurisdiction is assigned, should not also be the criminal judges. That being my opinion, I would make the native judges, criminal as well as civil judges. So long, however, as the native judges in India are as imperfect as they now are, it would be desirable and necessary to stay execution in all cases not of a very moderate degree of punishment, till the proceedings were reviewed by the sudder adawlut. There would be the inconvenience in that case of taking down in writing the proceedings and evidence; but this, I think, would be amply compensated by the advantages which would attend the arrangement. Some further provisions may be thought necessary with regard to very high punishments, especially those implying irremediable injury, above all, death; but it appears to me that the punishment of death in India might be kept within very narrow bounds, if not altogether abolished: it is known to be part of the character of the natives, to stand more in awe of other punishments than of the loss of life.

1053. What is the punishment more effective on the inhabitants in India than the capital punishment?—They dislike hard labour more, and banishment; and in truth the punishment of death even at present is sparingly inflicted.

1054. Do you apply your system of having native judges in the courts, to criminal cases occurring between a native and an European?—Yes; all questions occurring within the district to be decided in the same manner, whoever the parties may be.

1055. Do you think that it would satisfy an European that his case, either civil or criminal, should be decided in the provinces in those courts where only natives are judges?—The security to the European would be such as I think ought to satisfy him, because he would always have, in the last resort, the benefit of decision by an European judge of the highest grade, and acting under the strongest responsibility. Considerable objection is likely to rise in the mind of an Englishman at the first idea of being subject to punishment upon the award of a native judge. But as all decisions of a native judge awarding punishment beyond a very slight one should

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be stayed until the cause is reviewed by the superior court, no punishment beyond a very slight one would be inflicted upon an Englishman, except by the authority of the English judge.

1056. Do you think that Europeans would be satisfied by having their case decided by judges without a jury?—I think that having security for good decision, they ought to be satisfied. But if the prejudices of Englishmen should raise insuperable obstructions, a special provision might be made for them; a recorder's court might exist at the three presidencies to try Englishmen in the more highly penal cases, and then they might have the satisfaction of a jury also.

1057. If an extension of liberty is granted to Europeans to reside in the country, would it not be fair to exact from them, as a condition of such residence, that they should be subject to the same laws as the natives?—I think not only that it would be reasonable, but that it would be indispensable.

1058. Be so good as to offer any suggestions that occur to you with respect to the improvement in the mode of judicial procedure?—I think the mode of judicial investigation which has been common in India, is to a very considerable degree faulty. It has erred, in the first place, by a very unnecessary departure from the practice to which the natives were accustomed; I mean that of parties appearing personally before the judge and stating their own case. I believe that in India few things would be more efficient for the purposes of justice than oral pleading, which, properly managed, I deem an instrument of inestimable value. The judicial investigation divides itself into two parts; the first, what in England we call the pleadings; the second, what we call the trial. The first part consists in the essence and nature of the thing, in the statements and counter-statements of the parties; and the use of those statements and counter-statements is, that the exact point upon which the controversy turns may be ascertained. This is a matter of so much importance to a right decision, that it never ought to be intrusted to any body but the judge. When the parties are asked by the judge what is their demand and what the ground of it; what the defence, and the ground of it, he sees immediately what is relevant and what is not so, he discriminates what is well founded from what is ill founded, and is so far able, by clearing off all that is unsound and superfluous, to get at the merits of the case, to fix upon the exact point at which the controversy turns. This mode of proceeding is found by experience to have this other most important consequence. When the statements and counter-statements of the parties are made before the judge under the best securities for veracity, a very great proportion of causes stop there, and are satisfactorily conducted. The scrutiny of their statements by the judge enables the parties themselves to see whether they have grounds or not; they consent that a judgment should be pronounced at the first hearing, and all is over without delay and without the expense of a trial. When doubt remains, it is either with regard to a matter of fact or a matter of law: when the matter of fact on which the question turns is affirmed on the one side and denied on the other, then comes the trial, the object of which is to ascertain the truth with respect to the particular fact by evidence. But as the judge himself has thus determined the very fact which is to be proved, no witnesses are called but to speak to that fact. The judge might limit the number of witnesses, and the expense attending it still further; he might require

require of the parties a list of the witnesses each expected to speak to the point; and by questions eliciting what they are expected to know, and why, the judge would be enabled to discriminate what witnesses there would be any advantage in having, and what there would be no advantage in having, and it might be proper in him in such case, assigning his reasons, to grant his summons for such only as he thought would be useful.

1059. I want to know whether it would be possible to leave the parties to call the witnesses on each side?—The reason why the choice should be left to the judge is, that no witnesses but those who are likely to be really useful, should be subjected to the burden of attendance. The course of proceeding which is now followed in the courts, is attended with very different effects. The pleading, as the first part of the judicial investigation is called, is all in writing, and is reduced to a statement of the demand on the part of the plaintiff, and a statement of the defence on the other part: it is enjoined on them that they should confine themselves to the points which are in dispute. In reality, however, the instruments being prepared by the parties themselves and their advisers, who are incapable of discriminating the point in dispute, are a confused mass of allegations, and are so far from being intended by them to be the real representation of the truth, that they are as wide a departure from it as they can contrive, with any semblance of truth, to make it. There is in reality in this mode of proceeding no issue joined. Two great evils are incurred: one is, that every case, instead of stopping at the first stage, of necessity goes on also to the second, and incurs all the expense of the trial, necessary or not: the second is, that parties, not knowing to what particular facts or points witnesses will be required, are under the necessity of bringing them to every point for which they think it is at all probable they may be needed. With respect to the second part of the judicial investigation, viz. the trial, there is one thing which I should mention, a practice common in Bengal at least, which has been pressed upon them by the amount of business and want of time on the part of the judges; I mean the practice of taking evidence by deputy. A great deal of the evidence is there not taken by the judges themselves, but by the native officers of their courts, and reported to the judges, who decide upon this reported and very untrustworthy evidence.

1060. Have you any suggestions to offer with respect to the law that should be administered in our provinces in India?—The state of the law, the native law in India, is very imperfect; so little is there of what can be called law, that the business of the courts is little less than arbitration. Of law in India, resting on the authority of any legislature, there is none. There are certain books which they call law-books, but they contain only the opinions of certain individuals, and their talk is so general, so exceedingly loose, that it affords little or no direction. The customs of India are in fact the laws of India, that by which almost all rights are created and maintained; and these customs, at least in the great features, have luckily much uniformity. The judges in India have thus a peculiar duty; they have to take evidence not only to the matters of fact which come in dispute before them, but to ascertain the law; that is, to gather from the testimony of witnesses what is the custom of the country and of the place. Here the great practical question is, what can be done to classify and record those customs in a book, under

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such well defined heads and such accurate expressions as would give them in any degree the instructive operation of laws? It appears to me that a great deal might be accomplished. The leading customs which constitute the great directing principles in India, are not so many but that they might be comprehended in general propositions or maxims, which might receive by the Legislature the authority of laws, and thence by degrees a code of laws not interfering with, or disturbing existing rights, but in reality confirming and establishing them, might be obtained. The Regulations of the Government have to a great degree superseded the Mahomedan penal law, which was general in India when we established our dominion there. Our penal law, however, has not much accuracy, and all offences are classed under a few very general heads, so that a very large discretion remains with the judge: but there would be no great difficulty in breaking down those large classifications into subordinate ones, in such a manner as to render the penal law sufficiently precise. It is by no means impracticable to obtain in writing such general maxims both in the civil and penal branches of substantive law, as would afford a tolerable rule for the judges in India.

1061. You have spoken of the courts that have administered one system of law to Englishmen in India, and another system to the different classes of natives. On the supposition that Englishmen were allowed to hold land in India, would you introduce the English law of inheritance?—Not by preference. Uniformity is an important advantage, and the law of inheritance with respect to land should be the same as with respect to chattels, which is the law of the natives: but if it was considered by Englishmen a matter of importance that the law of primogeniture should be preserved, it does not occur to me that more than an inconvenience would be sustained by indulging them.

1062. Do you mean in the system of oral pleading recommended by you, to do away with the present system of plaint and answer?—Yes.

1063. Would you have the issue settled entirely by the judges?—Yes.

1064. Have you considered the subject of appeals from India to England?—I have thought of it certainly as a part of the general system.

1065. Do you consider the present system on that head as proper and efficient?—The mode of appeal against decisions in India, to the Privy Council in England, is undoubtedly very defective as hitherto managed. Appeals have been instituted, but no provision having been made for prosecuting them here, the misery of unfinished suits has been the consequence. Steps towards a remedy have been recently taken: it has been under the consideration both of the Court of Directors and the Privy Council, how this evil might be removed. If appeals are to come from India, provision ought undoubtedly to be made in some way or other for their being speedily brought to a hearing and conclusion; but it has never appeared to me, that for attaining the ends of justice substantially, an appeal to England is in reality needed. If you take, as you ought to do, the best precautions for obtaining correct decisions in India, it is unnecessary to go any further. It would be too much to assume, that injustice, after all we can do, would never be committed by the courts in India, because we never can have all perfect securities against injustice; but there is great advantage in having an end of litigation; and I am not apprehensive of so many instances of failure of substantial justice in India, that

that the remedy for them would be a compensation for the inconvenience incurred by sending them to England. One advantage which is frequently insisted upon, as derived from appeals to England is, that the attention of Englishmen is thereby called to Indian subjects, more fully and more closely than it would otherwise be: first of all, I think the attention of Englishmen is but little turned to the litigations before the Council; I hope that better means will be found of drawing attention in England to the government of India; and at all events, discussions in England must rather operate as a check upon the general proceedings of government, than as a security against mis-decision in the courts of law.

1066. Then is it your impression, that no appeal should be allowed from India to this country?—I think none should be allowed: I think if you make the courts there as good as you can make them, appeals to England will be attended with more evil than good.

1067. Have you attended to the subject, whether Europeans whom we employ to administer justice in India, should be educated for that purpose, or whether Government should trust to their being sufficiently qualified; whether or not provision should be made for their education?—I think an appropriate education for that portion of the servants of the Company, who are destined for the business of judicature in India, has not been sufficiently provided for. Anything that approaches to the nature of education for judges, as the subject is contemplated by me, has not, if I am rightly informed, had place at all. The College at Haileybury has chiefly had in view, as it ought, the business of general education; that the young men sent out might be well educated gentlemen; the object undoubtedly of primary importance. But what has been provided for legal instruction appears to me not to have been very well devised. What I mean is, that it is not directed to what should be the main object of it. The original design of the law-class at Haileybury was that of a class of English law, to which character, I believe, it pretty closely adhered till the time of Sir James Mackintosh, who took a wider range, but gave his instruction an historical rather than a legal cast, dwelling more upon the history of the English constitution than the history of English law, though even that would not have been to the purpose. The present professor, if I may judge by a list I have seen of questions propounded to his pupils, though he has not followed the course of his predecessors, is not much less wide of what I, perhaps erroneously, regard as the proper mark. His questions, for the most part, if what I have seen may be considered a fair specimen, bear on abstract points of moral philosophy and law, and however instructive in themselves, are not so appropriate for young men going to India to settle, pretty much in the way of arbitration, the disputes of the natives, as it would be to show them how the dictates of right reason are to be applied in so peculiar and so important a scene of action.

1068. Considering that the law-class of Haileybury is but one out of many to which all young men are obliged to pay attention, would it be possible in the course of two years, which comprises the whole time of their education, to instruct them to any great extent in the judicial duties which they may have to perform?—I should think not, attending as they do to the other parts of their education at the same time. After all, as the business of judges in India partakes so much of the nature

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nature of arbitration, with little guidance from law or established practice, at present, good sense is the best conductor, and the best preparation in the way of education is probably that which is best calculated to give a clear and discriminating mind. If a man has that he soon finds for himself the practical rules applicable to his situation.

1069. Would it be possible or advisable to have any system in India for preparing those who are to exercise the judicial functions; adverting to the circumstance, that if you establish a formal course of education in England, the rule must be, that the writers should choose the particular line of employment in India before they leave this country?—There is undoubtedly a difficulty in this, that those whom you educate carefully for the judicial line should be appointed to it; but the exigencies of the service and the distribution to be made of the existing agents, can be well understood only in India. But there is also a difficulty on the other side. It is only in England that the best teachers are to be had; and it would not be easy to obtain teachers with high qualifications in India. There would be one advantage in having the information bearing on the duties of judges communicated in India; that it would be given at a more advanced period of life, when it is more likely to be well understood and profited by than at the early age at which it would be given in England, where on the greater number it would not make a very deep impression.

1070. Upon the supposition that the writers, or such of them as showed a turn for that, were in this country to receive a course of instruction in the general principles and practice of law, without supposing them to enter minutely into political or local law, would they not be better fitted for most of the employments that would fall to them in India by reason of their having received legal instruction?—Undoubtedly; the instruction which would be useful, peculiar to those who are to exercise the judicial functions in India, would be useful in regard to every other function they would be called upon to discharge; a great deal indeed of what is done by the collectors of revenue is hardly less a judicial function than trying causes.

1071. Should you think the qualifications in this country would be equally attained by providing a system of instruction which the persons in question would be obliged to go through, or by establishing a test which they should be obliged to answer?—My opinion is, that the best mode of securing the qualifications we desire, would be to leave the young men to acquire them where it best suited them, and to establish a test: but I am inclined to make an exception with respect to legal education, because there is no opportunity in England of obtaining it, at least in that form which is appropriate to India. If, therefore, I trusted to the test in all other respects, I should be disposed, if it could be done, to make appropriate provision for instruction on the subject of law and its administration generally, as well as the peculiarities of both in India.

1072. Would it not be consistent with your last answer that a test should be established and should be rigidly enforced, and that an appropriate system of education should be approved of, which would be always resorted to if it was found to be the best means of qualifying for the test?—I think that none but good effects could be expected to flow from such an arrangement.

Lunæ, 2° die Julii, 1832.

The Right Hon. ROBERT GRANT in the Chair.

WILLIAM EMPSON, Esq. called in and examined.

1073. WHAT situation do you hold?—I am Professor of Law at Haileybury College.

1074. How long have you held your present situation?—I succeeded Sir James Mackintosh, I think in 1824.

1075. What number of lectures do you give?—The College consists of students classed in four successive terms of half a year each. During his first term the student was not expected to attend law lectures; but in consequence of our diminished numbers, I at present lecture the students of the first term together with those of the second. They attend only one hour a week every Wednesday; the students of the third and fourth terms attend two hours a week; that is, one hour on Wednesday and one hour on Thursday. As the general examinations, &c. leave about seven months in the year for lectures, a student who remains the entire two years at the College receives, in three terms, from 70 to 80 hours of law instruction; during the four terms, about 90 hours, according to my present arrangement.

1076. Is it in the nature of your lectures to prescribe any reading to the students who attend them, or from time to time to examine them as to the progress they have made in the subject on which you have been lecturing?—Observing the extreme state of ignorance on the part of young men of 16 or 17 upon these subjects, I have found it expedient to introduce them gradually to what might be called strict law. The same cause has rendered it desirable to take certain text-books, which, as containing the body or raw material of the lectures, they may afterwards go over by themselves. The advantage of collateral private reading is limited by the shortness of the time, and by the difficulty of putting into the hands of the students any great variety of books of reference. I have varied my courses occasionally, for obvious reasons; but my object has been to give every student an opportunity of obtaining just principles, and elemental knowledge on the limits between morals and law in the case of the chief political and civil rights; on the criminal law, English and Mahomedan; and on the law of evidence. With this view my usual text-book for the first and second terms has been the principal chapters of Paley's Moral Philosophy, with the corresponding chapters in Blackstone. By this means I have constituted a parallel line of observation between the nature and extent of moral duties and legal duties: as, for instance, the moral obligation of government and the legal obligation of government; the moral obligation of property, promises, &c., and the legal obligation of property; of different sorts of contract, &c.; the moral obligation arising from the different public and private relations, and the legal obligation arising from the same, pointing out the difference and the reason of the difference. For the third term my principal text-books have been Lord Kames' Essay on Criminal

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Criminal Law, Dumont on Rewards and Punishments, the last volume of Blackstone, Russel and Archbold, and so much of Harrington's Analysis of the Bengal Regulations as relates to the Mahomedan criminal law and the Regulations of the Governor and Council. For the fourth or last term my text-books have been Dumont's Book upon Evidence, Stephen upon Pleading, and the first volume of Phillips's Treatise of English Law upon Evidence, with the chapters upon testimony in the Mahomedan and the Hindoo law. The above I consider my usual course. In order to vary the subjects, I have lectured occasionally on the English forms of action, with Selwyn's Nisi Prius as a text-book, on Sir Thomas Strange's Hindoo law; and, for the first time, gave the two senior classes, this last half year, lectures on Pothier upon Obligations, and the two junior classes lectures in Domat's Civil Law, relating to succession and inheritance. Respecting the most useful course of lectures, I have inquired frequently of the civilians returned from India what was the best method which they thought I could pursue. I have usually, on their leaving College, requested of the students, who have paid most attention to law, that if, on their arrival in India, they could suggest to me any improvement in my lectures, I should be extremely obliged to them for any communications which they should make to me. It is next to impossible to make lectures upon law popular with the great body of young men. I have from time to time conversed with some of the students themselves upon the subject, in order to ascertain whether any and what alteration in my subjects or mode of lecturing might obtain a greater degree of successful attention throughout my classes.

1077. In consequence of the intimation you have stated yourself to have given to the students that were leaving college, that you would be glad to receive from them any suggestions as to your lectures, have you, in fact, received suggestions from any of them afterwards?—One letter only occurs to me at present, in which not so much suggestion of alteration was made as strong expressions on the importance of the law lectures, and the advantage which had been derived from them, and the daily regret on the part of the writer, that although he was second in my law class, he had not given a greater, and indeed, his principal attention to it. In answer to the latter part of the last question, I ought to mention, that at the end of every month I sometimes ask a few questions, sometimes here and there, upon the subject of the month's lectures. The feeling that the time given for instruction is so short, and my desire to get over more ground, have induced me not to do so as regularly as, upon the whole, would, I believe, have been desirable. At the end of each month I report the progress (according to the rules of the college) which I conceive to have been made in law. My monthly report is more conjectural than positive; a guess given from the incidental answers, from the apparent attention, the regularity of attendance, &c. The real examination is at the end of every term. That consists of a *vivâ voce* examination upon the body of the lectures, and of written answers to a paper of printed questions; the one enabling me to check the other. At the end of every lecture I give out a set of questions, the answers to which will be contained either in the lectures themselves, or in the books referred to. The examination at the end of the term is made up principally of a selection of some of the principal points in the previous papers of weekly questions, modified and enlarged.

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1078. When you state the number of hours given, you mean the number of hours occupied by attendance in the lecture room; but in order to obtain a proficiency, is it not necessary for that student to take a great deal of time privately upon the subject of them?—The test of *mere proficiency*, as rated at the point, somewhere about which, I understood, it was the intention that it should be left, is sadly low. I should think that a young man of ordinary abilities paying ordinary attention during the lectures, would afterwards soon get up his own note-book, or that of others, sufficiently to attain that test. Considerable more is required for what we call *good* proficiency, and a great deal more for *great*.

1079. Is the time, upon the whole, occupied by the subject of law at Haileybury as great as you believe to be possible, consistent with the attention to other subjects required by the system established at the College?—The students have, within certain limits, an option left them. There are four European departments. A student is allowed to keep his term, unless he fails in more than two of these, whilst the Oriental languages are considered indispensable. The consequence is, that except a student goes out of his way to give law a preference or partiality, against which the other professors are to a certain degree upon their guard, each endeavouring to protect his own department, it is, after all, a very limited amount of law, first principles, and the general bearings, which alone even a good student can possibly acquire.

1080. Consistently with the general system established there, could that portion, on an average, allotted to them be much increased?—Certainly not; the clever and industrious have their hands full, and more than full. Upon a voluntary system like ours, the idle and the stupid will never be brought to give law a preference over the other subjects; it can only hope to get its share.

1081. Are there lectures most days of the week at the College?—Every day in the week except Sunday.

1082. Upon what principle do you frame the questions put to the students at the regular examinations?—The questions, of course, depend on the lectures. The first object in lectures must be, to create in those who attend them some interest in the subject. I consider the lectures, therefore, of the first and second term as introductory and comparatively popular; the subsequent lectures on criminal law and on evidence go more into detail. Lectures may have made a considerable and a useful impression, and the questions upon them may be judiciously prepared, yet after all, it will be but a very small part of what has been learnt which the regular examination can bring out. It is more difficult to give really efficient lectures on law to young men of 17, who have no previous knowledge or interest in the subject, than those who have not attempted it are perhaps aware of. A lecturer is driven to a compromise, and the time of compromise is one of great nicety. If he is minute and technical, young men just come from school cannot follow him; on the other hand, generalities soon become vague and lose the strictness which constitutes law. The questions at the examination fairly represent the heads of instruction which has been put within the reach of the students during the time. Those who have worked hard can show the respective degrees of progress which they have made, and room is left for nobody to complain that he has not had an opportunity afforded him of answering whatever fraction of the lectures he supposes himself to have

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have got up. Criminal law and the law of evidence have been represented to me to be the great practical courses of instruction for actual service; I consequently have passed the two senior terms through them in succession, drawing the attention of the students in the lectures upon the latter subject to the necessity of the method of bringing out clearly in the pleadings the point in issue, and of strictly watching the evidence so as to confine it to the point in issue, with observations upon the credibility of the witnesses, and on the different questions arising out of documentary evidence, with the object of enabling them to apply the principles to cases that may arise. The knowledge and the habit of mind calculated to form a magisterial judgment on these matters is more within the scope of the required and indeed of possible instruction than the talent of conducting a cross-examination. In criminal law I have occasionally explained several of the trials in Phillips's Abridgment of the State Trials, and in the adjudged cases of the Nizamut Adawlut, in order to show the course and the points in which criminal questions practically arise. Considering the extreme technicality of the English law, and also the extreme difficulty of finding what the Hindoo law really is anywhere, and especially in different parts of India; considering, further, the declared impossibility, according to the testimony of the most eminent men in India, that the oldest civilian can sift and adjudicate upon the credibility of native testimony; the more that I have thought of it, the less practicable has the attempt appeared to me to be of usefully labouring in that direction.

1083. Do you think without allowing much more time to the study of law at the College, it would be possible to adapt the instruction given to the young men more closely for the functions which, in case they adopt the judicial line, they will have to exercise in India?—Certainly not; I am quite positive there is not a chance of it. The nature of the case must be kept in view; what it is which has to be taught; the probable qualifications of any attainable teacher; the probable description of person to be taught under a system of patronage, we must remember, and make a proper allowance for the average abilities and industry which a young writer will bring to a lecture room. Under these circumstances, and in so very limited a period as that which is now assigned to law, nothing is left but a choice of the portion of law which can be received. You must give what the student is capable of receiving, and what he is likely to remember. Some time will elapse before he is called upon to apply the instruction; it is, therefore, in choosing the portion, prudent to select principles, both of civil and criminal law, and of evidence of universal application rather than matters of detail.

1084. Have you had any means of knowing how far the legal instruction given at Haileybury has been of benefit in the administration of justice in India?—Not further than a letter or two, and hearing incidental expressions of satisfaction at the attention which some particular student may have given to the law department. If I may add to this question, I would observe, that with respect to the species of instruction to be given by a law professor in England, the state in which the Mahomedan and Hindoo law are left, as far as they are accessible to an English reader, makes it, I think, impossible for a discreet teacher to introduce more Mahomedan and Hindoo law than I have endeavoured to introduce. If legal instruction is to commence with the general principles out of which the different

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branches of the civil and criminal law are derived, this description of teacher will probably be less readily found in India than in England.

1085. Have you considered whether it would, on the whole, be expedient, supposing the system of sending writers from this country to India, that the writers should previously to their departure select the line in which they are to be employed in India?—I should think certainly.

1086. Or is it better that they should go out with a measure of general qualification, but without any determined department, without having pitched upon the very department in which they are to be attached?—For all other appointments except judicial ones I should conceive that the same general education might apply, and that no necessity for choice would arise. It is quite otherwise in the judicial. It seems to me impossible that a person who has thought seriously what are the duties of a magistrate can have a doubt but that a degree of preliminary information, the habit of considering such subjects, and at least an acquired preference for them, should be formed, before the person is called upon to act, or is put in circumstances where it is impossible for him afterwards to form the character and acquire the knowledge but at the most serious risks. The law is not *prima facie* an attractive study. Some little pains must be taken to lead a person forward, to give him a turn for it, and put him in the way of ascertaining what the difficulties are, and where they lie. Great difficulties must accompany the administration of every thing which can be called law. This is especially true of a system like the Hindoo, where it is often most embarrassing to distinguish between what is merely moral advice, and what is really meant to be positive and binding law.

1087. Your answer would rather lead to the inference that, in your opinion, the existing system does not make adequate provision for the legal qualifications which are required for the Company's service in India?—I cannot express myself on that point too strongly. I can say truly that I have trembled whenever I have sent out a class, and considered that they were to administer law in India.

1088. On the supposition, then, that there was a greater facility afforded to Europeans to go out to India, and to the Europeans there to attain situations in the Indian service, should you conceive that it still might be expedient to provide legal instruction in this country?—I should think it a scandal in a government which, knowing the difficulties that attend the forming a judicial mind, and acquiring legal knowledge under favourable circumstances, should nevertheless venture to leave its judicial offices to the hazard of finding such men growing on the spot. Whether the instruction should be given here or in India, is one question; that instruction should be given somewhere, is another. Of the necessity of this, in the present state of the Europeans in India, and until a change has taken place in this respect much beyond what I can conceive the free admission of Europeans into India could for a long time possibly produce, I should have thought that there could be no difference of opinion. If Hindoo justice is to be administered *arbitrio boni viri*, it is true that no particular instruction in law will be then wanted; but if it is to be law, as a science and a rule, there are all the difficulties which exist in England, and many more. Unless some provision is made for forming lawyers and judges, to expect that they will go there, and be found by accident as they are

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wanted, seems to me to be one of the very remote contingencies to which no government ought to trust on so important a subject.

1089. You would of course make exceptions?—Of course there may be exceptions now; more exceptions may arise. I speak with reference to the present state, or nearly the present state, of the service, and to the nature and qualifications of the class of Europeans in India. It will be time enough to enter into the question which a change of circumstances, it is true, may occasion, when it has in fact arisen. As soon as there are men competently qualified to choose out of on the spot, it will be absurd to go to the charge of manufacturing and importing them from England expressly for the purpose.

1090. Can you suggest any improvements in the legal education?—If instruction is to be given, and given in England, of course no comparison can be made between the progress which would be made by students taken on an average, and a student chosen upon a principle of selection. Even with that advantage, and still more in the want of it, it is most desirable that they should be a year or two older, and that a considerably greater portion of time should be allotted to instruction in law. Oriental law has to be put into solid and accessible shape as law. There is nothing in the Hindoo law, and not much in the Mahomedan, which a professor can teach with any comfort, at least as far as I am acquainted with it. If I am asked, on the supposition that the qualities and the age of the student, and that the time given to law remain the same, whether law might not be better learnt elsewhere than it is learnt on the system of the College at Haileybury, I should say that the students in law partake of the advantages and disadvantages of that system. I have always thought that for students of ability and industry it is impossible to improve upon the Haileybury system. For the average, it is itself an average establishment, gaining over some characters what it loses in others. For the idle and profligate, our system appeals to no motive to which they are sensible. The only advantage which Haileybury offers in the instance of a young man of that caste is, the chance that in an extreme case he may be stopped, and lose his appointment altogether. Looking, however, at the course of the same description of persons in our public schools and universities, I apprehend that what is most obnoxious at Haileybury is not so characteristic of Haileybury, either in kind or in degree, as might be expected under our voluntary system. At no place whatever, and under no possible system would it be possible to form legal knowledge or a judicial frame of mind in such individuals.

1091. Are you aware of any seminary in which there is now any course of legal instructions which would qualify young writers for judicial situations in India?—The only law lectures with which I am acquainted that could at all answer the purpose required, according to my view of that purpose, are those given by Mr. Amos at the London University. At Oxford and Cambridge there is nothing of the sort. But Mr. Amos's lectures are principally directed for young men in pleader's offices, or who are destined for attornies. The specific objects consequently of those lectures, and the appropriate object of instruction in the case of young men about to fill judicial situations in India are so distinct, that it seems to be impossible to at all satisfactorily combine them.

1092. Would

1092. Would it not be possible by the establishment of a test of legal qualification for persons going out to India, with a view to the judicial line, to secure a competent measure of qualification?—I see no difficulty whatever, except that the person who is to give the test must be supported by public opinion in the exercise of it in a very different manner from that of which the professors at Haileybury unfortunately found that they had the protection. For instance, I would draw out a syllabus on the subjects in which the young men were expected to qualify themselves; I would point out the source from which the knowledge was to be obtained. Suppose them to come at the end of 12 months or of two years in order to be examined in the different subjects, with full authority to the examiner or examiners to stop them in case they had not obtained a requisite amount of knowledge, I certainly see no difficulty whatever in the case. The terror of the loss of their appointment acting upon them would be a sufficient stimulus to make the great proportion acquire the knowledge, although they were not living under the instruction of a particular teacher.

1093. If an opening were made by which the ascertained qualifications of young men should be itself the passport to India, would or not that security be a better qualification than the system where the young men are first elected?—Certainly; for this is at once a principle of selection. At the same time the deficiency which I have felt at Haileybury has not been that the best students have not paid as much attention and made as much progress as almost a principle of selection could have secured to their respective departments, law amongst the rest. I have been surprised often at their merit. Our misfortune has been that we have had no inducement to bring to bear on the inferior order of students. It is a notion which I early took up, and which I have once or twice suggested, that the only way to meet this difficulty is to give the professors a liberal power of distinguishing in minor cases of demerit. What is wanted is some form of secondary punishment. After all, the evil to be apprehended is, not that they would exercise the powers too hastily, but too slowly. My notion was, that a certain proportion of the students who were at the bottom of their term should not keep their civilian appointment, but that they should drop down as of course to some inferior situation in the service. This would give us a hold on the inferior portion of a term, over which at present we have no hold whatever. They drive as near as they can. Such a power would enable us to whip up the lagging portion of a term. Suppose that sort of power to be withheld us, the advantage of a general certificate over our actual system would tell, in case it were high enough, by securing the exclusion of that portion which we have been obliged to allow to pass. None would be sent out so bad as some which we send out at present. Unless, however, the law students are older, and have more time than at present, I do not expect the improvement will be so great in the qualifications of the most distinguished, as, before my experience, I should have assumed as certain. I conceive that no certificate could reasonably be put higher than the point which the best students at Haileybury have attained in the law department.

1094. Is there anything in the present system which makes it obligatory on the professors to send out young men who, in their opinion, are not qualified to go?—I should say, certainly there has been felt to be in the College a moral obligation of that

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that description. I have unfortunately, much to my suffering, acted upon it. When I came to the College it would have been very misplaced in me to act on crude notions of my own; I talked with the professors of long standing, to get, as it were, a map of the country. Their account to me was, "We have been for 20 years raising the standard in the College, both in respect of conduct and attainment. We have now got it to a point which, if not answering entirely to our wishes, is nevertheless, on comparing it with what it was in the beginning, highly satisfactory. You must not expect too much; you must consider the difficulties of the case, and recollect what is expected from the young men in other departments as well as your own. The system is one of qualified patronage. The unfitness which is to disqualify must not be tried by a severe scale. The College is not understood to have been founded for the purpose of exclusion but in extreme cases. In all our exercises of this authority, when a discussion has arisen between us and the parties concerned, the public has taken this view of it, and sided with the individual whose appointment was endangered. Your predecessor observed, that the College on these occasions had every thing against it except justice." Consequently, I adopted and maintained as a minimum, as near as I could, the common standard. The dilemma in which the College is placed is one of great hardship. If we exercise the power which we ought to exercise on the part of the public, a storm of indignation is let loose upon the College, such as no other place of education ever was exposed to, and which must have a mischievous effect. Out of doors every body takes up the cry. Our only support is in the individual directors who happen to know the merits of the case. In case we do not exercise the power, and young men imperfectly qualified go out, remonstrances come home from India, that the College does not answer its purpose. It would certainly limit the patronage considerably. But I have always thought that our standard was as a minimum much too low. I know of no remedy of the present system except that the professors should be entrusted with a very considerable discretion in raising it; without such an understanding, I certainly do not expect that any professor (myself for instance) can calculate upon very much improving his own department.

1095. Do you mean to say that the general opinion and feeling of persons connected with the present Indian system are such that the professors cannot effectually exercise that power of selection which by theory you possess?—I certainly say so. Their experience unfortunately convinces them of it.

1096. In what way?—By finding the extreme unpopularity, the extreme odium to which they were subject; the cry that was set up over London, and the apparently worse than indifference of the public; every body joining in the observation, it is extremely hard that young men should lose their appointments for indiscretion, for idleness of a certain description; very hard that parents should be put to the necessity of the expense of an additional year's education, and so forth. One of the practical advantages in the management of the discipline, for instance, of the College which arose from the creation of the London Board, has been, that it enabled us more freely to send away young men who were just keeping within the verge of a positive statute or the like. In my own department I have constantly let young men pass who I think ought not to have passed, because I understood that the average had been raised, and raised much above what it had been formerly

formerly, and that we had got it as high as the parties to the contract at the establishment of the College, both the Company and the public, either meant or would consent that it should stand. I therefore have all along felt that I had no business to put my department higher, and exact for the law class terms which my colleagues did not exact; I was to take my place with the rest. The public cannot complain that the College has deceived them, by affecting to be a higher security than it has known itself to be. When cases of misconduct were stated and brought before them, the College was almost overturned by the tumult and irritation which was raised (this was before my connection with it), because the professors had done their duty. There is a letter of Sir Thomas Munro's, printed in his works, in which he observes, that he agrees with his correspondent on the extreme hardship of young men losing their appointments for the idleness and errors of youth, since they may afterwards turn out very valuable public servants. I remember observing upon the letter that it was a greater hardship upon the young men and their preceptors, that parents and governors of presidencies should join in a moral destructive to all education and discipline whatever. I do not see how the managers of a place of education are to support it against the observations of a man of Sir Thomas Munro's qualifications. If we are to be of any use, it is as a check; if we do at last take issue with young men on a certain degree, either of stupidity or idleness or vice, and give them notice that that appointment must be the forfeit, and governors of presidencies interpose with the plea of hardship, the possibility of latent qualities and final reformation, no establishment can answer the objects of moral and intellectual instruction which such establishments, whether at Haileybury or elsewhere, are ordinarily expected to answer.

1097. In point of fact, are you able conscientiously to say, that the standard of qualification (I put this as a general question), are you able conscientiously to say, that the standard of qualification at Haileybury has been raised as high as, considering the difficulties with which you have stated the institution to have contended, was practicable?—It is my decided impression and understanding that this is the fact. In making these observations, I ought to add, that my connection with the College is somewhat looser than that of my colleagues, as being a non-resident professor. During the greater part of the year I only go down to give my lectures. It is my rule, therefore, in questions connected with the system, to a very considerable extent to put myself in the hands of persons of great experience and character, who have been in the institution from its foundation, and upon whose judgment and upon whose integrity I can most confidently rely.

1098. Should you not conceive, that the complete loss of an appointment might in some degree be obviated by the plan to which you refer, by letting it fall to something inferior, but not a complete loss in the service?—The loss might be partial instead of total. Many a young man might make a very good soldier who would make a very bad lawyer, a very bad judge.

1099. Do you know whether the Board of Examiners has been as successful in qualifying young men for different situations in India as Haileybury?—I should think decidedly not. From what I have heard upon that point incidentally, I believe that the Examiners of the Board would give a very decided opinion to the same effect. There is no law standard, none in political economy; and the standard in classics,

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classics, &c. for *passing* I have understood to be about the same as our standard for *admission*. We may have passed at Haileybury young men who, on the whole, are likely to make as indifferent civil servants as any who have been passed at the Board. But I cannot think it possible that the effect of successful education should so far go for nothing, that, after the usual allowance has been made for extraordinary exceptions, the Board has with its lower test, and the other circumstances of the case, sent out, on the average, young men as good as our average, or has had anything like proportion corresponding to our best.

1100. If an examination for legal qualification were established, and there were perfectly free admissions of candidates to contend under that examination for the appointment of a writer, do you think that any great improvement would take place in the qualification of those going out to India?—Of course that must depend upon the amount of legal knowledge required in the certificate, and the freedom with which the examiners are encouraged, or at least supported, in the exercise of it. Compared with the present result, I think (other things remaining the same) that it would probably act much more by raising the standard of the lower three-fifths, than of raising the standard of the two-fifths at the top. You would probably have no such bad men pass as pass at present; but you must not expect more, unless the age is altered, or unless the legal department is put on an entirely different footing from what it is at present, and disconnected from the certain amount of Oriental knowledge with which it is now bound up. As long as the Oriental knowledge is a condition to an appointment, and must be verified before the appointment is secure, persons who look to it must first take themselves out of the European market, and devote themselves at once to the East without reprieve; you would not find a great number of persons to do that as it were blindfold; there must be something more than a conjecture or probability of future appointment as an inducement.

1101. Do you mean to say that under the supposed system the best candidates would not be better than they are now unless they were older than they are now, but that the general qualifications would be much improved?—Certainly; the general qualifications might be expected to be much improved.

1102. Would it be possible to open the College at Haileybury so as to make it a general seminary of instruction?—That depends very much upon how far the education which is meant to be given for the Indian service is to be a special education, with reference to special objects. In an attempt to combine the two, the problem would be not to leave out of the preparation for the Indian service any thing which it ought to include of those things which can be taught to greater advantage in this country than in India, and yet preserve such a general system of education as a young man not going out to India would be likely to consider was better for general purposes than he could elsewhere acquire. I am afraid there would be a difficulty.

1103. Is there any special subject of instruction except the study of the Oriental languages?—No, none except the Oriental languages, and a sprinkling in my own department. The references to Oriental law take up less than a fourth of a term in the two senior classes, and little in the junior.

1104. But if it were a general seminary, and with more choice to the students to select departments for which they had a particular taste, or for which they were supposed

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supposed by their friends to be particularly qualified, to the exclusion of other departments, would it not be possible to have a system of legal instruction, the greater part of which might be beneficial for persons not destined for India?—Certainly. My only fear would be this, that it would be in vain to expect that law, or the other branches of more common pursuits should be carried on to a sufficient extent and with sufficient rapidity. A deduction must be made for the Oriental departments. The Oriental professors calculate on two entire days out of the six; part of the other days are also given to Oriental learning; consequently the European professors have to draw up and wait as it were during that time; consequently students not following the Oriental department would rest on their oars those days, and it would be difficult to go on with them, and arrange for the Indian students to overtake them, or fall in.

1105. Would not that be a mere matter of arrangement?—There would be great difficulty in the arrangement. Besides, observe the age at which the students are required to come with whom the other young men would have to mix, and to whose capability, &c. of instruction, they must accommodate themselves. It is beyond their public school age; it is the age at which they are going to or would be at the University. We can expect few, unless those who came in order to give their whole time to law. Considering the great success of Mr. Amos, and the greater aptitude of his course for English practical purposes, few persons would come to Haileybury for law only.

1106. Do you conceive it essential to the education of civilians in this country that they should be taught the Oriental languages?—I can only answer from the conversation which I have had with Oriental professors and civilians: I should say, certainly not indispensable; at the same time it is desirable that they should have beforehand some grammar, and the elements of the Oriental languages, that they might not be detained so much longer at the Presidencies before they are fit to enter on the service.

1107. Is the Oriental language carried further at Haileybury than the point which you deem essential?—From the ability and zeal of the Oriental professors, I have no doubt that it is so. I am quite sure that they endeavour to make the most of their department.

1108. Do you think that the civilians should be older before they go out?—Certainly.

1109. Whereabouts would you fix the age?—I know of no reason why the judicial servants should go out younger than the medical servants of the Company. I have felt that one year additional was extremely important at that age. I have begged hard for it. It was considered, however, that a great deal had been conceded by averaging 16 as the minimum age, in point of law; and by throwing in generally one year more, in point of fact, the average age is 17. It is a great disadvantage, particularly in such a subject as law, to be obliged to lower the pace and keep down the quality of instruction under the point at which the kind of instruction which a lecture can give must be given most satisfactorily to all parties. Besides, the ordinary objections of the Haileybury system tell so much the more in proportion to the youth of the student.

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1110. In what way do you conceive that an open system might best be made to secure the maximum of qualification, the greatest possible measure of qualification in a young man going out to India?—The qualifications you want are both moral and intellectual. Let an option (according to the vacancies) be given to the young men who have distinguished themselves at our public schools or universities, of those who have made the option, let a certain amount of knowledge in law, and, if you please, in political economy and the Oriental languages, be required, there can be no doubt but that, if the terms of the option are properly watched, a much higher degree of moral and intellectual education on the whole will be obtained than any system of patronage can secure.

Veneris, 6° die Julii, 1832.

The Right Hon. ROBERT GRANT in the Chair.

Sir ALEXANDER JOHNSTON called in and examined.

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1111. How long were you in India, and what offices did you fill there?—I was sixteen years in office on Ceylon: during that time I held different situations of trust and responsibility under the Crown; for ten years I was Chief Justice, First Member of the High Court of Appeal, and President of His Majesty's Council.

1112. Were you ever on the continent of India; in what part, and for what time?—During the whole of the period I was in Ceylon I directed my attention very much to a consideration of the nature of the government, of the laws, and of the administration of justice in the peninsula of India; and with a view of becoming locally acquainted with the circumstances of the country and the character of the people, I made two journies by land from Cape Camorin to Madras and back again, the one in 1808 and the other in 1817.

1113. Had you any and what opportunities of personally observing or inquiring into the administration of justice in the peninsula of India?—I attended the proceedings of the different courts of justice, and I conversed upon the subject with several of the judges.

1114. Judges of the Company's courts?—Yes; and with the best informed of the natives of the country.

1115. It is understood that you were mainly instrumental in introducing into the administration of justice on Ceylon considerable alterations, especially as affecting the natives of that country?—As soon as I became Chief Justice, and First Member of His Majesty's Council, in 1806, I felt it to be my duty to state it officially as my opinion, that the surest way of retaining Ceylon and the rest of our Indian possessions was to admit the natives of the country to a share in the government of the country, and to allow them to administer justice to their countrymen. I also felt it to be my duty to state it officially as my opinion, that all laws by which they were

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to be governed ought, before they were passed, to be discussed and assented to by assemblies or councils in which all the interests of the different classes of natives were adequately represented. With this view of the subject, I advised the government of Ceylon to adopt various measures, and at the request of the Governor and Council I came to England in 1809, for the purpose of inducing the then Colonial Secretary of State to authorize those measures to be carried into effect. The late Marquis of Londonderry, who was then Colonial Secretary of State, entered fully into my views, and determined that all the measures I had advised should be carried into effect. However, his Lordship, in consequence of his sudden resignation of office in 1809, was only able to carry into effect before his resignation such of the measures as were necessary to introduce trial by jury amongst the natives of the country, to take off the restrictions which prevailed against Europeans holding lands and settling on Ceylon, to emancipate the Catholics in the island from the disabilities under which they had laboured for 150 years, and to encourage the gradual abolition of domestic slavery throughout the country; these four measures had formed part of a general plan which I had previously proposed to the late Mr. Fox for the improvement of the condition of the people of India. In the year 1802, when I was about to leave England the first time for Ceylon, I had various conversations on the subject of India with that gentleman, and in consequence of the request that he made to me at that time, I sent home to him in 1806 a paper containing some observations which I had drawn up on the alterations which I thought advisable in the administration of justice and in the government of the East-India Company's possessions on the continent of India. This paper was given to him by a relative of his and mine in the year 1806, when he was at the head of the administration, and I received an intimation from him through the same relative, that he approved of all the measures which I had proposed. If the Committee wish, I will produce a copy of this paper. Twenty-six years' experience, and a constant attention to the affairs of India, convince me that the measures which I then suggested are the most efficient which can now be taken for securing permanently the British authority in India.

1116. Are there any and what accessible documents, showing the measures which in fact have been introduced into Ceylon by your means, and the results of them upon the interests of that island?—Yes, there is a paper which was drawn up by a friend of mine in 1826, which contains a very full statement of all the different circumstances connected with the introduction of trial by jury into Ceylon, and a copy of the letter which I wrote to Mr. Wynn in 1825, when he was President of the Board of Control, giving him an account of the reasons for which I had extended the right of sitting upon juries to the natives of that island, and of the effects which that measure had produced. It was upon this letter that Mr. Wynn, in 1826, introduced the Act for extending the right of sitting upon juries to the natives living within the local jurisdiction of the Supreme courts of Bombay, Madras, and Calcutta.

1117. Speaking both from the personal observation and inquiries which you have made respecting the administration of justice in the peninsula of India, and also from the attention you have subsequently bestowed upon the subject, have you any remarks or opinions to offer as to the judicial system there established, either

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with reference to its constitution or its practical effects?—The late Marquis of Londonderry having, after my last return from India, requested me to draw up for his use a statement of what I conceived might be an improvement in the system of administering justice in the peninsula of India, I gave him such a statement in 1822, and beg leave to refer to it. In it I confined my observations to the British territories under the presidency of Madras, having at that time been more acquainted with them than I was with those under the presidencies of Calcutta and Bombay. I, however, beg leave to add, that subsequent information leads me now to think that what I then proposed for the territories under the presidency of Madras is also, with certain local modifications, applicable to the territories under the presidencies of Bengal and Bombay.

1118. Have you any suggestions or improvements to offer which are not contained in that paper?—The paper which I sent to the late Mr. Fox in 1806, that which I gave to the late Marquis of Londonderry in 1822, and that which was drawn up by a friend of mine in 1826, contain a general view of the several measures which I think necessary for the improvement of British India. As the Committee have requested me to give them in evidence, I beg leave to refer to them, and to add, that my original plan was to try all the measures advised by me in the first instance on Ceylon, and if they succeeded in that island, then to introduce them into the continent of India. The principal objects of these measures, in as far as they relate to the administration of justice, is to frame a special code of laws for British India; to abolish the distinction which now prevails between King's and Company's courts; to introduce one uniform system for the administration of justice throughout British India; and to establish a supreme court at each of the three presidencies in India, and a high court of appeal in England for the purpose, under the vigilant superintendence of both Houses of Parliament, of constantly securing the efficiency of every part of that system.

1119. Do you advise that the half-castes should have the privileges of British born Europeans?—Yes.

1120. Do you mean that they should be admissible to the places now held by the Company's covenanted servants?—Yes.

1121. How would that interfere with the regulations of the Company's service, by which writers are appointed in this country to go out to India for the purpose of occupying situations there?—I mean that half-castes should be deemed eligible to writerships in this country in the same way in which European born British subjects are now eligible.

1122. On the supposition that Europeans were more extensively admitted to reside in India, would it or would it not be desirable that situations which are now held by the Company's civil servants should be opened promiscuously to European or half-caste residents in India?—I certainly think it highly advisable that Europeans who are established in India, though not in the civil service, should, if they be properly qualified, be eligible to any of those situations.

1123. Will you explain more fully the plan which you have suggested for uniting in one system the King's and Company's courts in India, and subjecting them all to the superintendence of the three King's courts at the presidencies?—As my view

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of the subject is explained in the papers to which I have already alluded, I beg leave, by way of saving the time of the Committee, to refer to them.

1124. Have you considered the comparative merits of the present system of judicature in India, and that of which you recommend the substitution in the article of expense?—I have considered it generally; I think the system I propose will not be so expensive as the present system.

1125. Are you able to state why it would be cheaper?—Yes; because, independent of other circumstances, a great part of the system proposed by me for the administration of justice will be carried on by native judges, who require smaller salaries than European judges.

1126. Would you recommend any systematic provision for the purpose of qualifying those who are to fill judicial situations under your plan?—I should recommend that all Europeans who are destined for judicial situations in India should receive in this country, previous to their going to India, a regular education adapted to the judicial situations which they are to fill.

1127. If a test of qualification were rigidly enforced, would that answer the purpose?—I think it would, provided the persons who are to apply that test are men who themselves have had judicial experience in India.

1128. Would there not be a difficulty in finding means of qualifications, if the candidates were to be left to discover such means for themselves?—Yes; I should recommend the establishment of professorships for the purpose at one of the English universities, in the same way as professorships are established at Edinburgh, for the purpose of educating young men for the Scotch bar.

1129. Might not some use be made of the institution at Haileybury for the purpose in view, even supposing it to be discontinued in other respects?— Certainly.

1130. Will you state what is your opinion as to the merits of the proposition recently made from Bengal for the establishment of legislative councils in India?—I think that the formation of such councils in British India is highly advisable. I, however, think that a certain number of the most distinguished natives of the country ought to be admitted as members. I am convinced that the admission into them of native members is the surest way of rendering those councils efficient, popular, and beneficial to the natives of the country.

1131. Have you considered in what way such natives should be selected or appointed for the purpose in view?—At first, considering the novelty of the institution, it may be necessary for Government to select the native members. Measures should, however, I think be immediately taken by Government for forming an enlightened body of constituents amongst the natives of each province, and for calling upon them in future to elect the native members of council from their own body. In the eastern province of Ceylon the experiment of having a native council was first tried in the year 1783, by the then Dutch government. The great advantages which had been derived by that province from having such a council led me, in 1806, not only to propose its revival in that province under the British Government, but also to recommend that similar councils of natives should be formed in every one of the British provinces on Ceylon. I conceive that the natives of Bengal, Madras, and Bombay are not only not less competent, but are, generally speaking, more competent for becoming members of such councils than the

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the natives of Ceylon. The whole of India had been governed, for upwards of 2,000 years before the arrival amongst them of Europeans, by natives of the country, and had attained very great perfection in arts, literature, agriculture, manufacture, and commerce; it is therefore to be inferred that the natives are just as competent as Europeans can be to legislate for their own wants and their own country.

1132. Considering that the form of the British Government now established in India is in so great a degree despotic, do you conceive that the natives are yet ripe for so great a change as should introduce them to the highest places of Government?—The native population of British India consists, amongst others, of natives of high caste, high rank, great wealth, great talents, and great local influence, most of whom would, if a native instead of an European government prevailed in India, hold the highest offices in the state. I conceive that it is a great political object to attach such a class of natives to the British Government, and that the most certain way of doing so, is to declare them, even under the present system of government, to be eligible to some of the higher offices of state.

1133. How would their exercise of such authority comport with the maintenance of the British supremacy?—If they knew that the offices and the honours which they held depended upon the continuance of the British supremacy in India, they are more likely to support that supremacy with all their influence in the country, than if they felt, as they do at present, that they have no such offices and honours to lose by the overthrow of that supremacy.

1134. Would you then render natives eligible to the situations, or any of them, now held by the Company's covenanted servants?—I would render them eligible to all judicial, revenue, and civil offices. Even now, by a recent regulation, they are appointed to fill very high judicial situations.

1135. By the regulation to which you refer, the natives being eligible to judicial situations for the decision of suits of the value of 5,000 rupees, do you see any reason why they should be limited to that value?—None whatever.

1136. Would not, however, the general admissibility of natives to the situations of the Company's service wholly break up the system of patronage by which those situations are now filled?—If it should be thought necessary to keep up this system of patronage, the situations to which natives are declared to be eligible may be limited, both as to their amount and as to their nature.

1137. Are you of opinion that the judges at the presidencies should be members of the legislative councils?—The judges of the Supreme court in Ceylon are members of the King's Council on that island. The object in placing them in council is, that they may, from their knowledge of law, advise the Governor and Council upon all points of law connected with the different questions that come before the Council. In the same way the judges at Calcutta, Madras, and Bombay, may be extremely useful as members of the councils at those presidencies. As the King's judges are independent of the local governments, they are likely to give those governments more independent advice upon subjects, in which the feelings of Government are concerned, than persons who are dependant upon those governments for their promotion.

1138. You have spoken of "numbers" of the natives being members of the legislative councils; what in your opinion should be the number of counsellors?—

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Such a number of them as may induce the natives of the country to believe, that the interests of all the different classes of natives are fairly and adequately represented in those councils.

1139. Would you have the majority of the Council natives?—That I think must depend upon the nature of the powers with which these legislative councils may be ultimately vested.

[*The Witness was requested by the Committee to furnish the Committee with Copies of the Papers which he had tendered in the course of his examination.*]

Jovis, 9° die Julii, 1832.

The Right Hon. ROBERT GRANT in the Chair.

Sir ALEXANDER JOHNSTON called in and further examined.

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1140. You have brought with you a Paper which you promised to the Committee last time?—Yes.

1141. And which you stated that you had communicated in the year 1806 to Mr. Charles Fox?—Yes; (A.) is a copy of the Paper which I sent to Mr. Fox from Ceylon in 1806; (B.) a copy of that which contains a detailed statement of all the different circumstances connected with the introduction of trial by jury and the abolition of domestic slavery on Ceylon; (C.) a copy of that which I gave to the late Marquis of Londonderry in 1822, and (D.) a copy of that which I gave to Mr. Wynn, then President of the Board of Control, and to some of the other members of the Privy Council in 1826, upon the subject of the appellate jurisdiction of the King in Council, in cases of appeal from the Supreme and Sudder Adawlut courts in India.

See Paper (A.)
See Paper (B.)
See Paper (C.)
See Paper (D.)

1142. On your former examination, you suggested that a general code of laws should be framed for India, which should be adapted to the different religions that prevail in that community; have you at all considered what means should practically be taken for framing and adopting such a code?—I should propose that the plan explained by me in (A.) should be adopted for that purpose. I followed with success a similar plan (*vide* E.) while in Ceylon, for collecting materials for framing a Hindoo and Mahomedan code for the use of the Hindoo and Mahomedan natives of that island; and I am of opinion that such a code as I have proposed for the use of British India in (A.) may be completed in the time I have mentioned in that Paper.

See Paper (E.)

1143. That is three years?—Yes.

1144. Have you any suggestions to add to those contained in your Paper, respecting appeals to the King in Council from India?—I have only to add, that measures ought immediately to be adopted for relieving all the parties to the appeals, which have been so long pending before the Privy Council, from the great expense

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expense and inconvenience to which they have been subjected by that delay. In order that the Committee may know what measures it may be advisable for them to adopt, I shall beg leave to explain to them the nature of those which have already been taken upon the subject. In 1809, the late Marquis of Londonderry, then Secretary of State for the Colonies, when he appointed the Chief Justice, First Member of the High Court of Appeal, and President of His Majesty's Council on Ceylon, being fully aware of the defects of the constitution of the Privy Council, considered as a court of appeal from the courts in India, and knowing that the offices which I held would enable me to become thoroughly acquainted with the subject, expressed a wish that I would give it, while on Ceylon, the most mature consideration, and when I returned from that island, report my opinion to him as to the best mode of rendering the Privy Council an efficient and expeditious court of appeal for hearing cases in appeal from India. In order to enable myself to acquire all the necessary information, I, previous to my departure from England in 1811, with the assistance of the late Mr. Chalmers, then one of the clerks of the Council, examined the nature of all the proceedings which had taken place from the earliest period before the Privy Council, in cases of appeal, from all the British colonies, and made copies of the opinions which all the Crown lawyers and judges had at different periods given upon the question; and during my stay on Ceylon examined most attentively all the proceedings which took place in India in cases which were appealed from the three courts of sudder adawlut in that country, to the King in Council in England. In 1822, I, after my return from Ceylon, at the request of the late Marquis of Londonderry, gave his Lordship, as I have already mentioned, the Paper of which (C.) is a copy. As the Marquis died soon after, no steps were then taken for carrying into effect any of the measures which I had proposed in that Paper: one of them was the measure for calling in aid of the Privy Council, whilst sitting as a court of appeal in Indian cases, a certain number of the retired King's and Company's Indian judges. In 1825, on my attention being again directed to the subject, I found that in consequence of a variety of different circumstances, particularly of the ignorance of the natives of India as to the mode of prosecuting their appeals before the Privy Council, scarcely any appeals whatever from the courts of Sudder Adawlut, in which natives of India only were concerned, had been heard and decided by the Privy Council since the year 1799, and that nearly 50 cases, some of which were of great private and public importance, were in arrear, and had become a cause of great expense, great inconvenience and great dissatisfaction to all the natives of India who were in any way connected with them. In 1826, knowing, as I did, that it was the Marquis of Londonderry's intention, had he lived, to have advised His Majesty's Government to adopt the measure I had proposed relative to Indian appeals, I felt it to be my duty to call the attention of the Board of Control, and some of the members of the Privy Council, to the subject, and with that view drew up the Paper of which (D.) contains a copy, explaining to them the nature and extent of the appellate jurisdiction of the King in Council in cases connected with British India, and pointing out to them a mode by which the Privy Council itself might be rendered, without any additional expense to the public, a most efficient court of appeal for all Indian cases. In order to facilitate the proceedings of such a court, and to enable the Privy

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Privy Council to decide without any further delay upon the cases which had been so long in arrear, I, in pursuance of the plan contained in the Paper (D.) suggested to the then President of the Board of Control the utility of employing Mr. Richard Clarke, a retired civil servant of the East-India Company, well acquainted with the proceedings of the Company's courts in India, as a registrar for Indian appeals in this country, an office which will afford the Privy Council the means of acquiring without delay a thorough knowledge of the nature of all the different cases which may be appealed from India, and of deciding upon each case, if the parties require it, without putting the parties to the expense and delay of being heard by counsel. Mr. Clarke having, in consequence of my suggestion, been employed by the Board of Control in communication with the Court of Directors, and having completed an analysis of the several cases of appeal now in arrear, the present President of the Board of Control, with the most laudable anxiety to relieve the natives of India from the grievance which they have so long suffered, and to prevent for the future all unnecessary delay in the hearing of Indian appeals in this country, in March last, requested Sir E. Hyde East, the late Sir James Mackintosh and myself, to assist him with our advice upon the subject. The Paper (F.) contains copies of the letter which Mr. Grant wrote to me upon the occasion, of my answer, of the joint opinion of Sir E. Hyde East, Sir James Mackintosh, and myself, of a letter which I subsequently wrote to Mr. Grant, and of a paper which I enclosed in that letter, explaining to him in detail all the different measures which I, after consulting with Mr. Clarke upon the subject, thought necessary to be adopted in India and in this country. These papers have, I understand, been forwarded by the President of the Board of Control to the Privy Council, and are now under their consideration.

See Paper (D.)

See Paper (F.)

1145. It has been suggested to the Committee, that instead of allowing an appeal to the King in Council from India, there ought to be constituted in India a final court of appeal from all the different judicatures there established; what is your opinion of that suggestion, comparing it with the plan which you have recommended?—I think that the court of appeal, if established in England according to the plan I have proposed, will be a more competent, a more independent, a more popular, and a less expensive court of appeal than any which can be established in India. A more competent one, because it will be composed, which it could not if it were established in India, of the most efficient of the King's and Company's judges who have retired from the service, after having held for many years the highest King's and Company's judicial situations in India, and who must possess more judicial and local information than can be procured from any other persons relative to every part of India. A more independent one, because it will be composed, which it could not if it were established in India, of men who have retired from the service, and are independent in their circumstances, and who therefore can have nothing to fear or to hope either from the local government or from persons high in authority in India. A more popular one, because it will, from being connected with the Privy Council, and from being supported by an enlightened British public, be able, which it would not be if it were established in India, effectually to shield against every unjust and party attack those Indian judges who may feel it to be their duty, however detrimental to their local interest and to their comfort

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in society, to protect the natives of India against any description whatever of arbitrary exaction or oppression. A less expensive one, because it will be composed, which it could not be if it were established in India, of judges of talent and experience, who are to receive no pecuniary remuneration whatever as judges of the court of appeal. To avoid all unnecessary delay and all unnecessary expense, I should propose, if such a court be established in England, that a person thoroughly acquainted with the nature and proceedings of the King's and Company's courts in India be appointed registrar of the court in this country for Indian appeals. That all the appeals and all the papers connected with them be sent direct from the courts in India to this office. That it be the duty of this officer, as soon as he receives the papers in each case, to arrange them and make a report upon them to the court. That it be the duty of the court, after perusing the papers, to decide upon them without delay, hearing counsel or not in each case, as the parties interested in the case may require. If these rules be adopted, the result of every appeal to England may be known in India in ten or twelve months from the date at which the appeal papers were originally forwarded from India to England, and the only objection, that of delay, which is urged with any weight against the court of appeal being established in England, will be effectually answered, and all grounds removed for depriving eighty millions of His Majesty's subjects in India of the right of appealing to the King in Council in England, which every British colony in every quarter of the globe has already possessed, which they themselves have enjoyed for the last sixty years, and which is of peculiar importance to them in the present times, when in consequence of the great progress which they are making in knowledge, and of the enlightened views which they are beginning to entertain upon all questions of law and government, they are more in want than ever of the protection of an independent court in England, whose proceedings will always be subject to the observations of an active press and both Houses of Parliament.

1146. Your answer seems to imply the continuance of the present system; in other respects how far would you modify your opinion, on the supposition that such a change was to take place as to introduce into India an extra number of European residents, to create a local public of greater influence and efficacy than now subsists in that country, and in other ways to supply both more materials for an appellate court and a more efficient control, by means of a public supervision over the proceedings of such court?—My opinion is certainly formed upon a consideration of the present state of society in India: many years must pass before it will be advisable for the natives of India to relinquish the right which they now enjoy of protecting themselves against injustice, by an appeal to the King in Council in England.

1147. Supposing a general code to be framed, what means would you recommend to secure a due application of it among the natives of India?—I should advise that it be translated into the most common languages of India, and that its nature be publicly explained to all the people of the country by public officers appointed for the purpose.

1148. Would it be necessary, in framing such a code, to consider very particularly the state of the different communities now in India, not being Europeans?—It will be necessary, in framing such a code, to consider most carefully the laws, usages, and

and feelings of the natives of all the different castes and of all the different religious persuasions which prevail in India.

1149. How far are the Catholics in India recognized by the local government, or in connection with it?—As I have been recently engaged, as Chairman of the Committee of Correspondence of the Royal Asiatic Society of Literature, in collecting information relative to the state of all the Catholics in India, I have in the course of my inquiries received a very interesting letter upon the subject from the Abbé Dubois, a priest of the Catholic religion, who has been 31 years in India, and is thoroughly acquainted with the state of the Catholics in India: I beg leave, in answer to this question, to refer to the Paper (G.), which is a copy of that letter. *Sir Alex. Johnston.* See Paper (G.)

1150. Would it be expedient that any control should be used by Government over the ecclesiastical appointments among the Catholics in our dominions?—I think that, considering the number of the Catholics who are now in the British territories in India, some arrangement ought immediately to be made upon the subject, by the British Government and the Pope. I think it my duty to add, that the conduct of all the native Catholics who were within my jurisdiction while I was Chief Justice and President of His Majesty's Council in Ceylon, was such as to convince me, that whenever the Catholic natives in India are properly superintended, as they are in Ceylon by their priests, they will always form a most loyal and a most respectable class of His Majesty's subjects in that country. The number of native Catholics in Ceylon is upwards of 100,000, and in the course of the whole of my judicial career in that island I observed that fewer offences were committed by natives of that religious persuasion, than by natives of any other religious persuasion whatever on the island.

1151. Have you any suggestion to offer as to the expediency of having a maritime code for the use of the natives or Europeans navigating the Indian seas?—I beg leave, in answer to this question, to refer to the Paper (H.), which is a copy of the plan which I some years ago gave to the Admiralty, for framing a maritime code for the use of all the different natives of Asia who navigate the Indian seas, and who trade with the several British possessions in India. This plan was formed by me, upon the information which I had previously collected while I was Judge of the Vice-Admiralty Court on Ceylon, relative to all the maritime laws and usages which had prevailed at different times amongst the Chinese, Hindoos, Persians, Arabians, Malays and Maldivan navigators and traders. I shall soon be able to obtain further information upon this subject, as I am engaged at present, as Chairman of the Committee of Correspondence of the Asiatic Society, in collecting from every part of Asia all the documents which can be procured relative to this description of law, for the use of Monsieur Pardessus, the celebrated French lawyer, who is about to publish a history of the maritime laws and usages of every quarter of the globe. See Paper (H.)

1152. Have you turned your thoughts to the subject of domestic slavery in India, and would you offer any suggestions on that subject?—I felt it to be my duty, from the time of my arrival on Ceylon, to adopt such a line of policy in my official capacity as would, I thought, inevitably in a short time put an end to the state of slavery in that island. Having, on my return from England in 1811, as Chief Justice and President of His Majesty's Council, brought out with me the Act of 1811, declaring

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declaring the trading in slaves to be felony, and a commission authorizing myself and certain other commissioners to try all offences against that Act with a grand and petty jury, I caused the Act to be publicly promulgated upon the island, and a case of importance having occurred in 1813, all the prisoners, one of them a man well known throughout Arabia and Asia, were tried and convicted before me, which called the attention of the people to the nature of the offence, and prevented the commission of any more offences of that description. In consequence of the proceedings at this trial, and the remarks which I made upon the subject of slavery at all the criminal sessions, to the persons who were on the roll of jurymen, much interest was excited, and all the proprietors of domestic slaves, to the number of 763, natives as well as Europeans, came to a resolution in July 1816, declaring that all children born of their slaves after the 12th of August 1810, should be considered as born free, and thereby put an end to the state of domestic slavery which had prevailed in Ceylon for 300 years. The Paper, of which (I.) is a copy, contains the details of what took place on the occasion. I have, since my return to England, been engaged, as Chairman of the Committee of Correspondence of the Royal Asiatic Society, with the assistance of Mr. Baber, the late Judge on the Malabar coast, in collecting such information relative to the state of slavery in the peninsula of India as may enable the British Government to adopt on the continent of India the same policy relative to the state of slavery, as that which has been successful in Ceylon. The Committee of Correspondence of the Asiatic Society have already collected some very useful information upon the subject, from various quarters, particularly from the papers published by order of the House of Commons in 1826, and they soon expect to obtain much more from different parts of India.

See Paper (I.)

1153. Have you any means of knowing the proportion of slaves to freemen in Ceylon?—At the time all the proprietors of slaves on the island of Ceylon came to the resolution which I have just mentioned, there were 763 proprietors, and, as I understood, between 9,000 and 10,000 slaves: the population of the then British territories on the island was about 600,000 people.

1154. Can you state whether any and what steps were taken in Ceylon during your residence there, for facilitating the holding of lands by Europeans?—Restrictions similar to those which prevail in the East-India Company's possessions on the continent of India, were in force in the King's possessions in Ceylon up to 1810, against Europeans holding lands in perpetuity on the island. Believing that the best way of improving the island, and securing the affections of the natives, would be for His Majesty's Government to encourage, by all means in their power, the settlement of Europeans in every part of the country, and the introduction of European capital, European industry, and European arts and sciences, amongst the people, I advised the late Lord Londonderry, as soon as I arrived in England in 1809, to repeal all these restrictions, and to authorize the local government to grant lands, under the most favourable conditions, to any British Europeans who might be willing to settle upon the island. The restrictions were accordingly repealed in 1810. It was the intention of Lord Londonderry, on my advice, had he remained in office, to have followed up this measure by giving the island of Ceylon such a free constitution of government as would have suited the habits and feelings of British settlers. This intention, however, was, in consequence of his resignation, not

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not carried into effect, and few or no Europeans have hitherto availed themselves of the offer of the government of Ceylon to give them grants of land. The Paper (K.) is the copy of a Paper which contains an account of all the circumstances connected with this subject.

See Paper (K.)

1155. Have you considered how far facilities may be afforded in India to the possession of land by Europeans, beyond those now afforded, and generally the settlement of Europeans in the interior of the country?—From all I have heard and read upon the subject, I think that the British Government ought to encourage British Europeans to settle in India, for the purpose of improving the country and increasing the influence and the authority of the government amongst all classes of the people.

1156. If the number of lower Europeans in the interior were much increased, then, supposing them admissible to offices and privileges which are not open to the native Indians, is there no danger that a jealousy would be created which might lead to injurious effects?—The Europeans who will be anxious to settle in the interior of India will, I should think, in general be persons of some capital, or some particular skill and talent; such persons, independent of any other motive, will endeavour, with a view to their own interest, to conduct themselves well, and to make themselves popular with the natives of the country. I do not conceive that their admission into such offices as their acquirements may qualify them to fill, can excite any peculiar degree of jealousy amongst the natives, or be productive of any injurious effects in the country.

1157. The supposition of the last question was, that such a number of Europeans residing in the country as to create a sort of caste or class distinct from the natives; supposing that class to be admissible to places under government, or to have privileges of any kind which are not open to the natives in common with them; the question then is, whether a sort of jealousy would not be produced in the mind of the natives at their own exclusion from the same advantages?—I conceive that all the natives of the country ought to be eligible to all judicial, revenue, and civil situations whatever, and that if this were the case, no jealousy would be excited in the minds of the natives by the circumstance of an European, though not in the Company's service, being deemed eligible, if his conduct be good, to similar situations.

1158. Even supposing an intelligent European was not possessed of capital himself, would his superior skill not be useful in turning to account the capital of the natives?—I have no doubt whatever that it would often be of great advantage to the natives to have an European of skill and talent, though without capital, settle among them, because it is probable that by his skill and talent he would enable such of them as are engaged in agriculture or in manufactures to make many improvements, which may be of the greatest advantage to them in the pursuits in which they are engaged.

1159. In opening appointments to natives and Europeans generally, would you admit at the same time half-castes?—I should certainly advise the half-castes to be declared to be eligible to the same situations as Europeans and natives. While I was on Ceylon, I considered every half-caste, if properly qualified, to be eligible to every magisterial and other office under the supreme court. Some of the most respectable

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respectable and the most efficient magistrates and officers of the supreme court were half-castes. My opinion as to the policy which ought to be pursued with respect to the half-castes in British India, is given at length in my answer to a letter which I received in May 1830 from Mr. Ricketts, the then agent of the half-castes in this country, of which (L.) is a copy.

See Paper (L.)

1160. Are you acquainted with the Jury Bill which has just passed the House of Commons?—Yes, I am; I think that it will be attended with the best effects in India. The conciliatory manner in which the present President of the Board of Control has received the petition of the natives of India, and the readiness with which he has brought in a Bill to relieve them from some of the grievances of which they complain, will show them the attention which the present Board pays to their feelings, the respect which it entertains for their character, and the confidence with which it intrusts the lives, the liberty, and the property of their fellow-countrymen to their discretion and to their protection.

1161. Has experience shown that the introduction of jury trials in Ceylon has succeeded?—Yes; my own experience, that of my successors in office, and that of the King's Commissioner, Mr. Cameron, prove that it has completely succeeded. For an account of the result of my experience, I beg leave to refer to the Paper (B.); for that of my successors, to the following extract from Sir Harding Gifford's Charge; and for that of Mr. Cameron, to the following extract from that gentleman's Report:

See Paper (B.)

EXTRACT from the Charge delivered by Sir Harding Gifford, the Chief Justice and First Member of H. M. Council in Ceylon in 1820, on his taking possession of his office, after the resignation of Sir Alexander Johnston.

"BUT there is one feature of the history of offences for the last two years so remarkable, that it cannot without injustice to the people be overlooked.

"It has been my duty to examine the criminal calendars of that period, with a view to inform myself of the state of offences generally; and I have been both surprised and gratified to observe, that during this interval, an interval marked by violence and convulsion in the interior, that there does not appear to have occurred in our maritime provinces a single instance of even a charge of turbulence, sedition, or treason, or of any offence bearing the slightest tinge of a political character. It is too well recorded, and is within the personal knowledge of some of yourselves, that during the Kandian War of 1803, the revolt of some of our maritime districts added in no slight degree to the difficulties of that melancholy period. To what are we to attribute so remarkable a change? Certainly not to the superior character of the government. In mildness and benevolence, Mr. North's administration was assuredly not exceeded by that of any of his successors. But, Gentlemen, let us ascribe it to the true causes; to the long and steady experience of the blessings of a government administered on British principles, and, above all, to the introduction of trial by jury.

"To this happy system, now (I may venture to say) deeply cherished in the affections of the people, and revered as much as any of their own oldest and dearest institutions, I do confidently ascribe this pleasing alteration; and it may be boldly asserted, that while it continues to be administered with firmness and integrity, the British Government will hold an interest in the hearts of its Cingalese subjects which the Portuguese and Dutch possessors of this island were never able to establish.

"It may appear, and with justice, that I indulge some degree of personal gratification in referring to this subject, when I tell you, that in a report made to the government of Ceylon in June 1817, by the Advocate Fiscal of that period, there is contained an observation which shows

shows that this feeling is not new, and we know how fully it has been justified by subsequent events. In that document it is said, that 'amongst the inhabitants of the maritime provinces, I know the jury system to be already (this was in the seventh year of its operation) a favourite. The wisdom of the Supreme Court has most happily adapted it even to their prejudices, so that they had actually begun to feel attachment to it on that account, even before they were aware of all its advantages.'

"And the report adds, 'Armies may waste away from climate or disease, and seasons and circumstances may baffle the utmost exercise of human foresight; but, fixed on the attachment of the people to our jurisprudence, I look upon the security of the British interests in (the maritime provinces of) Ceylon to be impregnable.'

"And can we, Gentlemen, with these pleasing results before us, omit to render our tribute of recollection to the learned Judges by whose zeal and ability this system has been put so happily into operation?

"Of one of them, holding, as he still does, that station in society so well merited by his talents and services, it would be difficult in me, without indelicacy, to offer more than that tribute which it would be injustice to withhold. To his perfect knowledge of the native habits and character, and his extensive acquaintance with their institutes, it was owing that the jury system was thus so skilfully adapted even to their prejudices, and so deeply rooted in their affections as to have had the consequence in which we now rejoice."*

EXTRACT from a Report of C. H. Cameron, Esq., one of His Majesty's Commissioners of Inquiry, to Lord Viscount Goderich, dated 31 January 1832.

"THE trial by jury, as your Lordship is aware, was introduced at the suggestion of Sir Alexander Johnston, by the charter of 1810. I attended nearly all the trials by jury which took place while I was in the island, and the impression on my mind is, that an institution in the nature of a jury is the best school in which the minds of the natives can be disciplined for the discharge of public duties. The juror performs his functions under the eye of an European judge, and of the European and Indian public, and in circumstances which almost exclude the possibility of bribery or intimidation. In such a situation he has very little motive to do wrong, and he yet feels and learns to appreciate the consciousness of rectitude. The importance which he justly attaches to the office renders it agreeable to him, and he not only pays great attention to the proceedings, but for the most part takes an active part in them."

1162. Are you aware of any reason why the system of jury trial which succeeded in Ceylon should not be equally successful in India?—I have for the last 20 years had frequent communications with persons from Madras, Bombay, and Bengal upon this question. I have also read several documents containing the opinions of those who are competent to form a correct judgment upon the subject. These communications and documents leave no doubt in my mind of the applicability of jury trial to every part of the British possessions in India, provided it be so modified as to suit it to the customs and feelings of the people amongst whom it is introduced.

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* "The Honourable Sir Alexander Johnston, the late Chief Justice and First Member of His Majesty's Council, at whose recommendation, and according to whose plan, the trial by jury was introduced into Ceylon, in November 1811, and the right of sitting upon juries, instead of being confined, as it is in other parts of India, to Europeans, was extended, under some modifications, to every native upon the island, the effects of which are to make the natives themselves participate in the administration of justice amongst their own countrymen."

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duced. The documents to which I allude, in as far as they relate to Madras, are the minutes of the late Sir Thomas Munro, and his letter to Lord Hastings upon the subject; the minutes of Mr. Graham, his successor in the government of Madras; the printed regulation passed by the Governor and Council of Madras for carrying into effect, after Sir Thomas Munro's death, his plan for the introduction of jury trials throughout the presidency of Madras; the evidence before the House of Lords of Mr. Baber, one of the most able and enlightened of the East-India Company's judges. The documents to which I allude, in as far as they relate to Bombay, are the addresses presented by the principal natives of Bombay, upon the death of the late Chief Justice of that settlement, Sir Edward West, to the two surviving Judges of the Supreme Court at Bombay, and the petition signed by 4,000 of the most distinguished inhabitants of all castes and religious denominations at Bombay, and sent by them to the House of Commons about two years ago, in which, though I am not personally acquainted with any one of them, they do me the honour of alluding to me in the most flattering terms, merely from the circumstance of their conceiving me to be the first person who had ever extended by a charter of justice the right of sitting upon juries to the natives of India. The documents to which, independent of many others, I specifically allude, in as far as they relate to Bengal, are different parts of the evidence of Rajah Ramohun Roy before the Committee of the House of Commons. In corroboration of these documents, I can speak from personal knowledge as to the decided opinion which the late Sir Thomas Munro entertained in favour of the introduction of trial by jury amongst the natives of India, for I met him in 1817 on the peninsula of India, at his particular request, six years after I had introduced jury trial into Ceylon, for the express purpose of explaining to him the manner in which I had adapted that mode of trial to the customs and religious feelings of all the natives of all the different castes and religious persuasions on that island, and the conclusions which I drew as to the moral and political effect which it was calculated to produce upon their character and conduct.

1163. Can you conceive anything better adapted than the system of jury trial, to give the people of India that confidence in themselves, and prepare them for those free political institutions, which it must be the ultimate object of this country gradually to introduce?—I cannot conceive any system to be better adapted for that purpose in India than the system of trial by jury, provided it be so modified as to suit it to the feelings of the natives and the circumstances of the country: it gives the natives an additional value for education, for character, for public opinion; it makes them acquainted with the nature of their laws, and with the moral and political effect of their institutions; it exercises their minds in sifting and weighing the evidence of persons of every caste and of every religious persuasion; it accustoms them to decide, and declare their opinion in public; it gives them a confidence in their own talents, and in their own judgment; it makes them feel themselves to be the guardians of the lives, the liberties, and the property of their countrymen; it convinces them that they are treated with confidence and respect by their rulers; it excites in them an additional interest in every thing which relates to the administration of justice, and to the government of the country; it affords them a public opportunity of displaying their knowledge, their patriotism, and their talents

talents upon subjects of the greatest interest, and must ultimately lead them, as it did all the jurymen on Ceylon who were proprietors of slaves, and who declared free all children born of their slaves after the 12th of August 1816, to show themselves worthy of the rights and privileges of freemen, by showing themselves ready, if necessary, to sacrifice their private interests to their respect for the cause of humanity and freedom.

1164. Does not the simple circumstance, that the facts in a criminal case must be brought before twelve individuals in the same situation as the prisoner, form a very great security for individual liberty, and so prepare the country in which it is introduced, for the exercise of political freedom also?—Yes; it places the liberty of every native of British India under the safeguard of his countrymen; it creates a native public to protect him against oppression; it encourages him to form and declare his opinions without fear or disguise, and it thus renders him capable of exercising political freedom with credit to himself and with benefit to his country.

PAPERS presented by Sir *Alexander Johnston*, and referred to in his Evidence of 6 and 9 July 1832.

(A.)

THE Paper sent by Sir Alexander Johnston, in 1806, from the Island of Ceylon to the late Mr. Charles Fox, then at the head of the Administration of Affairs in England, in consequence of Mr. Fox having requested Sir Alexander, when he left England in 1802, to send him, after his arrival on the Island, his opinion upon the different subjects to which the Paper alludes.

THE best policy which Great Britain can pursue in order to retain her possessions in India, is to raise the moral and political character of the natives, to give them a share in every department of the state, to introduce amongst them the arts, sciences, and literature of Europe, and to secure to them, by a legislative act, a free constitution of government, adapted to the situation of the country and the manners of the people. With this view I propose,—

1st. That a general system of education founded upon this policy be established for the benefit of the natives in every part of the British territories in India.

2d. That the natives be declared eligible to all judicial, revenue, and civil offices whatever.

3d. That all laws by which the natives are to be governed be, before they are adopted as law, publicly discussed and sanctioned by local assemblies or councils, in which the interests of every class of natives shall be adequately represented by natives of their own class.

4th. That the local governors be deprived of the power which they are now authorized to exercise at their own discretion of sending Europeans without trial out of the British territories in India, and that no European shall for the future be sent out of any of those territories on any charge, unless under a regular sentence of banishment passed against him by a regular court of justice, after a fair and public trial, and a conviction by a jury of some offence to which the law has attached the punishment of banishment from the British territories in India.

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5th. That a law be passed affording the same protection against illegal imprisonment to every native and every European in the British territories in India as the Act called the Habeas Corpus Act affords to every person in England.

6th. That measures be immediately taken by all the governments in India for the gradual abolition of domestic and every other description of slavery which now prevails in different parts of British India.

7th. That it be declared illegal for any British government in India, or for any individual acting by its authority, to force a native, under any pretence whatsoever, to labour without pay or against his will.

8th. That it be declared illegal for any British Government in India to exclude any native from holding any office under the British Government in India on account of the nature of any religious creed which he may profess.

9th. That measures be immediately taken, by giving to each description of them an efficient and respectable ecclesiastical establishment, by enforcing a system of strict moral discipline amongst them, and by removing all motives of religious jealousy between them, for making every description of Christian, whether Catholic, Syrian, or Protestant, within the British territories in India, respectable in the eyes of the natives of the country.

10th. That measures be immediately taken for putting all the descendants of Europeans in British India, known at present by the very invidious denomination of half-castes, upon the same footing as European born British subjects in every respect as to education, laws, and eligibility to office, and thereby rendering every person descended from a European, whatever his complexion may be, provided his character be good, respectable in the eyes of the natives of the country.

11th. That all the restrictions which at present prevail against Europeans settling in any of the British territories in India be taken off; and that all British Europeans be not only permitted, but encouraged by the British Government in India to acquire and hold lands in perpetuity, and to settle in every part of the country, as the surest way of introducing the arts, the science, and the improvements of Europe amongst the natives, of increasing their wealth, their comforts, and their prosperity, of extending the influence of Europeans in the country, and of strengthening the British authority in India.

12th. That the press be considered and used as a powerful engine for forming an enlightened public amongst the natives of the country, for enabling the British Government to know the real sentiments of the people respecting all its measures, for preventing all public functionaries from abusing their power, and for protecting the Legislature in any improvements it may introduce against the prejudices of the ignorant and the intrigues of the disaffected.

13th. That the distinction which now prevails in British India between King's and Company's courts of justice be abolished, and that there be but one system of administering justice throughout British India.

14th. That there be a special code of law for British India, drawn up in the simplest language, divested of all technicalities, and adapted to the feelings and to the manners of the different descriptions of people, European as well as natives, who compose the population of the country.

15th. That this code consist of four parts,

1st. To contain the civil law applicable to Europeans.

2d. The civil law applicable to the native Hindoos.

3d. The civil law applicable to the native Mahomedans.

4th. The criminal law, applicable both to Europeans and natives, Hindoos as well as Mahomedans.

16th. That civil and criminal justice be administered to all the inhabitants of British India according to this code, by judges and assessors educated for the purpose, and by juries adapted, as to number, qualification, and every other circumstance, to the feelings of the people, and the local situation of the country.

17th. That

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17th. That there be both European and native judges in British India: that all Europeans who intend to be judges in India, be educated for the specific purpose in England, and be publicly examined, and declared to be properly qualified for the situation by the High Court of Appeal in England, before they can be eligible to the situation of a European judge in British India; and that all natives of India be educated for the specific purpose in India, and be examined and declared to be properly qualified for the situation by the Supreme Court of the Presidency to which they may belong, before they can be eligible to the situation of a native judge in British India.

18th. That the criminal and civil jurisdiction of the European and native judges respectively, be carefully regulated with a view to the situation of the country, and the feelings of each class of the inhabitants.

19th That in civil cases (subject always to the above consideration) the European judges do exercise only an appellate jurisdiction, and the native judges only an original jurisdiction.

20th. That every criminal prisoner, European and native, shall have a right to be tried by a jury for any criminal offence, not declared by law to be a minor offence, with which he may be charged.

21st. That to save the inhabitants of the country from all unnecessary inconvenience, every jurisdiction exercised by any judge, whether criminal or civil, original or appellate, be exercised in such a manner, either by circuits or otherwise, as may put the parties who are concerned, prisoners, suitors, and witnesses, to as little expense and delay as possible, by bringing justice as near as possible to their respective homes.

22d. That to save suitors in civil cases from all unnecessary delay and expense, the number and the nature of the pleadings, copies of papers, &c. allowed by the courts, be as few as possible consistent with the attainment of justice; the parties to a suit have the option of proceeding in court either by themselves, or by an attorney or counsel, as they may think proper; and all tables of fees be framed by the local assemblies or councils, with a strict consideration of the circumstances of the people who are likely to have suits before the court.

23d. That to prevent the officers of the several courts from having an interest, or from appearing to have an interest, in the delay of justice, or in the accumulation of papers in a suit, all officers of court be paid by fixed salaries, be strictly prohibited from receiving any fees, or deriving any emolument whatever from the use of monies deposited in court; and be compelled to pay all fees of court, and all monies deposited in court, without the smallest delay, into the public treasury.

24th. That in order to prepare the natives of the country to exercise the duties of judges and jurymen, they be employed as frequently as possible as assessors to the European and native judges in the administration of civil and criminal justice.

25th. That in order to increase the respect of the natives for the office of a juryman, a list be made out of all the persons in each province who are qualified, according to a plan which shall be hereafter arranged, to act as jurymen; that this list be constantly exhibited in the most public places in the province; that it be revised every half year; that at each revisal, the names of all those who have been improperly omitted be added to the lists, and the names of all those whose conduct since they were put upon the list has disqualified them from the honour of being upon the list, be erased from it; the question in either case, as to whether the name of a person ought to be added or erased from the list, to be tried and decided by a jury.

26th. That in order to form an enlightened and independent public amongst the natives, a native reporter be attached to each court, who shall report all the cases which occur before the court; and that a native newspaper be established in each province for the purpose of publishing all the circumstances which are connected with these cases, and encouraging the natives of the country to discuss without fear the nature of the decisions which have been given by the judges of the respective courts.

 27th. That

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27th. That all the different maritime customs and maritime usages of all the different natives of various parts of Asia who navigate the Indian seas, and who trade with the different ports belonging to the British territories in India, be carefully collected, and a maritime code prepared from them for the use of all the native mariners who trade with the British territories in India; and that courts, the proceedings of which shall be regulated by this code, be established at all the most convenient ports in British India.

28th. That there be a Supreme Court of Justice at each of the three Presidencies in British India; that it be a court of appellate jurisdiction only; that it shall, in communication with the local Government, have the complete superintendence and control over, and be held responsible for the efficiency of whatever system may be established for the administration of justice and for the regulation of police throughout the Presidency to which it belongs.

29th. That there be a high Court of Appeal in England, consisting of the President of the King's Council, an English lawyer of eminence, some of the King's retired Indian judges, and some of the Company's retired judicial servants; that it shall exercise an appellate jurisdiction over the three courts at the three Presidencies in India in cases of a large amount or of a particular description; shall try and decide all complaints brought against Indian judges for acts done by them while acting as judges in India; shall exercise, in communication with the Government in England, the complete superintendence and control over the whole system for the administration of justice and regulation of police throughout every part of British India; shall make a detailed report to both Houses of Parliament, at fixed periods, of its own proceedings, and of the state of the administration of justice and the police throughout British India, explaining in such report, for the information of Parliament, the nature of any defects which it may have observed, and of any improvements which it may have to propose; and, finally, that it be considered by Parliament as publicly responsible for the efficiency of the whole system of administering justice in India.

30th. That a commission consisting of three persons be sent by Parliament to India, for the purpose of collecting, with the assistance of the most intelligent Europeans and natives in the country, materials for framing such a code as has already been mentioned for the use of the inhabitants of British India; and that the duration of this commission be limited to three years, from the date of the arrival of the commissioners in India.

31st. That in order to enable the commissioners to obtain the official assistance of the natives of the country in framing that part of the code which relates to the civil law of the Hindoos and Mahomedans, the following plan be pursued:

That all the native inhabitants qualified to sit on juries in each province do elect a certain number of the best informed and most respectable natives of the province into a committee, for the purpose of submitting to the commissioners a report, which shall contain an authentic account (arranged under such heads as shall be sent to them by the commissioners, of all the laws and usages which prevail in their province, together with their opinion as to the moral and political effect of each of those laws and usages, and as to the alterations which they may think necessary to be made in any of them.

That the commissioners do send to the committee so elected in each province a paper containing the different heads under which they require information respecting the laws and usages of the province; intimating to the committee at the same time, that it is their intention, as soon as the committee make their report, to exhibit it publicly, with the names of the persons who have framed it, to all the people of the province, for their consideration and observation.

That such report, when drawn up by the committee in the style and language best understood in the province, be publicly exhibited for six months, in the most frequented part of every village in the province, with a public invitation to the people of the village to offer such objections or observations upon the report as may occur to them, for the information of the commissioners, and with a public notice that should no such objections or observations

observations be offered by them within six months, the commissioners will conclude that the report has received their approbation.

That the commissioners do, at the expiration of the above period of six months, collect the several reports, and do arrange from them, and from such other information as they may possess, a code of Mahomedan and Hindoo law for the approbation of Parliament.

That translations of the above code be made in every language and idiom which is spoken in any province of the British territories, and that a certain number of printed copies of it, be deposited for the use of the inhabitants, in the most frequented parts of each village in every province.

That the translation which is prepared for the use of any particular province be made under the immediate superintendence of the committee which framed the report upon the laws and usages of that province, and be read and explained by the respective servants of Government in each village of the province to every person belonging to the village.

Note.

The information upon which such a code is framed must be authentic, because it is derived from the best informed men in the country, chosen, for their local knowledge, by their own countrymen, under circumstances when they have no apparent motive to deceive the commissioners; but, on the contrary, every motive arising from a desire to establish a character for talents, integrity, knowledge, and patriotism amongst their countrymen, to afford the commissioners the most accurate information upon a subject which is intimately connected with the happiness, the prosperity, and the religious and moral institutions of themselves and their countrymen.

Such a code must be easily understood by the commonest person in the country, because it is drawn up in the language of the country, under the superintendence of those who are the best acquainted with that language, and because it has been explained to, and received the approval of, every person in the country.

It must be generally useful to the people of the country, because, from its being intelligible, and from its having been explained to them, it makes them know what the law is upon any particular subject, without the expense or inconvenience of consulting a lawyer; and because, in case of a law-suit, it enables the courts of justice to decide upon questions of law without difficulty or delay. It must be popular amongst the people of the country, because it is framed upon local information received by the commissioners from persons pointed out to the commissioners for the purpose by the people of the country, and confirmed as to its accuracy by the people themselves, to whom it was submitted for their consideration before it was received by the commissioners. It will relieve the people of the country from the expense, the delay, the inconvenience, and the oppression to which they are at present subject, from the incessant and endless law-suits which arise out of the obscurity and uncertainty of the laws by which their lives, their liberty, and their property are regulated, and enable each person really to do what, by a fiction of law he is in all countries presumed to do, understand the laws by which he is governed. It must always have weight amongst the people of the country, because it will always have the support of the persons of the greatest influence in the country, upon whose information it was framed, and of all the people of the country who publicly sanctioned that information. It will be instructive to the local government of the country, and to the Parliament of Great Britain, because it will afford them an authentic account of all the local laws, usages, and institutions which prevail in the country, of all the good or bad moral and political effects which they produce, and of the different alterations and improvements, which, in the opinion of the best informed men of the country, may be introduced by Government into the habits and manners of the people.

IV.
JUDICIAL.

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(B.)

CONTAINS an Account of the measures adopted by Sir Alexander Johnston for the introduction of Trial by Jury, and the Abolition of Domestic Slavery on the Island of Ceylon, of the moral and political effects produced by those measures upon the natives of that Island, and of the circumstances connected with the Act of 1826, which, in consequence of the success of the similar measure on Ceylon, extended the right of sitting upon Juries to all natives of India living within the local limits of the Supreme Courts of Bombay, Madras, and Calcutta.

AS our Indian administration, especially the judicial branch of it, is becoming, from peculiar circumstances, a subject of increasing interest, a statement, from authentic sources, of the important experiments which have been successfully made at Ceylon, accompanied by an exposition of the principles upon which they were adopted, and the advantages which they have already been attended with, cannot but be gratifying.

Sir Alexander Johnston, the then Chief Justice and first member of His Majesty's Council in Ceylon, after a very long residence on that island, a very attentive examination of all the different religious and moral codes of the various descriptions of people who inhabit Asia, a constant intercourse for many years, as well literary as official, with natives of all the different castes and religious persuasions which prevail in India, and a most careful consideration of every thing which related to the subject, recorded it as his official opinion, in 1808, that the most certain and the most safe method of improving the British Government in India, of raising the intellectual and moral character of the natives, of giving them a real interest in the British Government, and of insuring the continuance of their attachment to the British empire, was to render the system of administering justice amongst them really independent, efficient, and popular; and that the wisest method of gradually attaining these objects, was by granting to the natives of the country themselves, under the superintendence of European judges, a direct and a considerable share in the administration of that system.

As a very general opinion prevailed, both in India and in England, that the natives of India, from their division into castes, from their want of intellect, from their want of education, and from their want of veracity and integrity, were incapable of exercising any political or any judicial authority, either with credit to themselves or with advantage to their countrymen, it was, for many reasons, deemed prudent by Sir Alexander Johnston that the experiment of allowing natives of India to exercise the same rights and privileges in the administration of justice in India as are exercised by Englishmen in Great Britain should be first tried on the island of Ceylon.

The intellectual and moral character of the inhabitants of Asia is formed, in a great degree, if not altogether, by the different systems of religion, and the different codes of morals which prevail amongst them, and which may be ranked (viewing them not according to the purity and truth of their doctrines, but according to the number of persons who are subject to their influence,) in the following order:—

1st. The Hindoo religion and code.
2d. The Buddhist religion and code.
3d. The Mahomedan religion and code. And
4th. The Christian religion and its system of morals.

Considering them, therefore, with a view to the peculiarities of their intellectual and moral character, the inhabitants of Asia may be divided into the four following great divisions, each division practically exhibiting, in the character and conduct of the different classes of people who belong to it, the intellectual and moral effect of their respective religious and moral codes:

1st. Those who profess the pure Hindoo religion, or some of its modifications.

2d. Those

2d. Those who profess the Buddhist religion, or some of its modifications.

3d. Those who profess the Mahomedan religion, or some of its modifications. And

4th. Those who profess the Christian religion, whether according to the doctrines of the reformed or of the Catholic Church.

The population of Ceylon consists of a considerable number of inhabitants of each of the four following descriptions of people; viz. 1st, of about half a million who derive their descent from the inhabitants of the opposite peninsula of India, who profess the same modification of the Hindoo religion, who speak the same language, have the same customs and laws, and the same division of castes, as those inhabitants; 2dly, of about half a million other inhabitants who claim their descent from the people of Ava and Siam, who have the same religious and moral code, and who profess the same modification and the same customs of the Buddho religion as the inhabitants of those two countries; 3dly, between 50,000 and 60,000 Mahomedan inhabitants, who are partly of Arab and partly of Mogul descent, who have the same customs and laws, and who profess the same modifications of the Mahomedan religion as prevail amongst the different classes of Mahomedans who inhabit the peninsula of India; and, 4thly, of a very considerable number of what in the rest of India are called half-castes, descended partly from Portuguese, partly from Dutch, and partly from English Europeans, some of them professing the Catholic, some the reformed religion, and all of them resembling in character and disposition the half-castes in the rest of India. As it was therefore obvious that the population of Ceylon was composed of a great number of each of the four great divisions of people of which the population of the rest of India was composed, Sir Alexander Johnston conceived that, should the experiment of extending the rights and privileges of Englishmen, in as far as they relate to the administration of justice, to all the different descriptions of half-castes and other natives on the island of Ceylon, be attended with success, it might therefore be acted upon with great moral and political advantage in legislating for the different descriptions of half-castes and other natives on the continent of India.

From the year 1802, the date of the first royal charter of justice, to the year 1811, justice had been administered in the courts on that island according to what is called, in Holland, the Dutch-Roman law, both in civil and in criminal cases, without a jury of any description whatever, by two European judges, who were judges both of law and fact, as well in civil as in criminal cases. In 1809, it was determined by His Majesty's Ministers, on the suggestion of Sir Alexander Johnston, that the two European judges of the Supreme Court on Ceylon should for the future, in criminal cases, be judges only of law, and that juries, composed of the natives of the island themselves, should be judges of the fact in all cases in which native prisoners were concerned; and, in November 1811, a new charter of justice under the Great Seal of England was published on Ceylon, by which, amongst other things, it was in substance enacted, that every native of the island who was tried for a criminal offence before the Supreme Court should be tried by a jury of his own countrymen, and that the right of sitting upon juries in all such cases should be extended, subject to certain qualifications, to every half-caste, and to every other native of the island, whatever his caste or religious persuasion.

This experiment of extending the rights and privileges of Englishmen having, after 16 years' experience, been found to be productive of the greatest security to Government, and of the greatest benefit to the people of the country, it has become a subject of serious consideration both in India and in England whether the same rights and the same privileges as, since the year 1811, have been exercised with the most beneficial effects by the natives of the island of Ceylon, may not also be exercised with the same good effect by all the natives of the East India Company's dominions in India; and Sir Alexander Johnston, at the request of the President of the Board of Control, wrote to him, in the year 1825, the letter, of which the following is a copy, explaining to him the reasons which originally induced Sir Alexander to propose the introduction of trial by jury amongst the natives of Ceylon, the mode in which his plan was carried into effect, and the consequences with which its adoption has been attended.

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" Dear Sir, " 26th May 1825.

" I HAVE the pleasure, at your request, to give you an account of the plan I adopted while Chief Justice and first member of his Majesty's Council on Ceylon, for introducing trial by jury into that island, and for extending the right of sitting upon juries to every half-caste native, as well as to every other native of the country, to whatever caste or religious persuasion he might belong. I shall explain to you the reasons which induced me to propose this plan, the mode in which it was carried into effect, and the consequences with which its adoption has been attended. The complaints against the former system for administering justice on Ceylon were, that it was dilatory, expensive, and unpopular. The defects of that system arose from the little value which the natives of the country attached to a character for veracity, from the total want of interest which they manifested for a system, in the administration of which they themselves had no share, from the difficulty which European judges, who were not only judges of law, but also judges of fact, experienced in ascertaining the degree of credit which they ought to give to native testimony, and finally from the delay in the proceedings of the court, which were productive of great inconvenience to the witnesses who attended the sessions, and great expense to the government which defrayed their costs. The obvious way of remedying these evils in the system of administering justice was, first, to give the natives a direct interest in that system, by imparting to them a considerable share in its administration; secondly, to give them a proper value for a character for veracity, by making such a character the condition upon which they were to look for respect from their countrymen, and that from which they were to hope for promotion in the service of their government; thirdly, to make the natives themselves, who, from their knowledge of their countrymen, can decide at once upon the degree of credit which ought to be given to native testimony, judges of fact, and thereby shorten the duration of trials, relieve witnesses from a protracted attendance on the courts, and materially diminish the expense of the government. The introduction of trial by jury into Ceylon, and the extension of the right of sitting upon juries to every native of the island, under certain modifications, seemed to me the most advisable method of attaining these objects. Having consulted the chief priests of the Budhoo religion, in as far as the Cingalese in the southern part of the island, and the Brahmins of Remissuram, Madura, and Jafna, in as far as the Hindoos of the northern part of the island were concerned, I submitted my plan for the introduction of trial by jury into Ceylon to the Governor and Council of that island. Sir T. Maitland, the then Governor of Ceylon, and the other members of the Council, thinking the object of my plan an object of great importance to the prosperity of the island, and fearing lest objections might be urged against it in England, from the novelty of the measure, (no such rights as those which I proposed to grant to the natives of Ceylon ever having been granted to any native of India), sent me officially, as first member of Council, to England, with full authority to urge, in the strongest manner, the adoption of the measure, under such modifications as his Majesty's Ministers might, on my representations, deem expedient. After the question had been maturely considered in England, a charter passed the Great Seal, extending the right of sitting upon juries, in criminal cases, to every native of Ceylon, in the manner in which I had proposed, and on my return to Ceylon with this charter in November 1811, its provisions were immediately carried into effect by me.

" In order to enable you to form some idea of the manner in which the jury trial is introduced amongst the natives and half-castes of Ceylon, I shall explain to you; 1st, what qualifies a native of Ceylon to be a juryman; 2dly, how the jurymen are summoned at each session; 3dly, how they are chosen at each trial; and, 4thly, how they receive the evidence and deliver their verdict. Every native of Ceylon, provided he be a freeman, has attained the age of 21, and is a permanent resident in the island, is qualified to sit on juries. The fiscal, or sheriff of the province, as soon as a criminal session is fixed for his province, summons a considerable number of jurymen of each caste, taking particular care that no juryman is summoned out of his turn, or so as to interfere with any agricultural

or

or manufacturing pursuits in which he may be occupied, or with any religious ceremony at which his caste may require his attendance. On the first day of the session the names of all the jurymen who are summoned are called over, and the jurymen, as well as all the magistrates and police officers, attend in court, and hear the charge delivered by the judge. The prisoners are then arraigned; every prisoner has a right to be tried by thirteen jurymen of his own caste, unless some reason why the prisoner should not be tried by jurymen of his own caste can be urged to the satisfaction of the court by the Advocate Fiscal, who on Ceylon holds an office very nearly similar to that held in Scotland by the Lord Advocate, or unless the prisoner himself, from believing people of his own caste to be prejudiced against him, should apply to be tried either by thirteen jurymen of another caste, or by a jury composed of half-castes, or Europeans. As soon as it is decided of what caste the jury is to be composed, the registrar of the court puts into an urn, which stands in a conspicuous part of the court, a very considerable number of the names of jurymen of that caste out of which the jury is to be formed; he continues to draw the names out of the urn (the prisoner having a right to object to five peremptorily, and to any number, for cause), until he has drawn the names of thirteen jurymen who have not been objected to: these thirteen jurymen are then sworn, according to the form of their respective religions, to decide upon the case according to the evidence, and without partiality. The Advocate Fiscal then opens the case for the prosecution (through an interpreter if necessary) to the judge, and proceeds to call all the witnesses for the prosecution, whose evidence is taken down (through an interpreter if necessary), in the hearing of the jury, by the judge; the jury having a right to examine, and the prisoner to cross-examine any of the above witnesses. When the case for the prosecution is closed, the prisoner states what he has to urge in his defence, and calls his witnesses, the jury having a right to examine, and the prosecutor to cross-examine them, their evidence being taken down by the judge: the prosecutor is seldom or never, except in very particular cases, allowed to reply or call any witnesses in reply. The case for the prosecution and for the prisoner being closed, the judge (through an interpreter when necessary) recapitulates the evidence to the jury from his notes, adding such observations from himself as may occur to him on the occasion; the jury, after deliberating upon the case, either in the jury box, or, if they wish to retire, in a room close to the court, deliver their verdict through their foreman in open court, that verdict being the opinion of the majority of them; the most scrupulous care being taken that the jury never separate, nor communicate with any person whatever, from the moment they are sworn, till their verdict, having been delivered as aforesaid, has been publicly recorded by the registrar. The number of native jurymen of every caste on Ceylon is so great, and a knowledge before-hand what persons are to compose a jury in any particular case is so uncertain, that it is almost impossible for any person, whatever may be his influence in the country, either to bias or to corrupt a jury. The number of jurymen that are returned by the fiscal or sheriff to serve at each session, the impartial manner in which the names of the jurymen are drawn, the right which the prisoner and prosecutor may exercise of objecting to each juryman as his name is drawn, the strictness which is observed by the court in preventing all communication between the jurymen when they are once sworn, and every other person, till they have delivered their verdict, give great weight to their decision. The native jurymen being now judges of fact, and the European judges only judges of law, one European judge only is now necessary, where formerly, when they were judges both of law and fact, two, or sometimes three were necessary. The native jurymen, from knowing the different degrees of weight which may safely be given to the testimony of their countrymen, decide upon questions of fact with so much more promptitude than Europeans could do, that since the introduction of trial by jury, no trials lasts above a day, and no session above a week or ten days at furthest; whereas before the introduction of trial by jury, a single trial used sometimes to last six week or two months, and a single session not unfrequently for three months. All the natives who attend the courts as jurymen obtain so much information during their attendance, relative to the modes of proceeding and the rules of evidence, that since the establishment

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of jury trial Government have been enabled to find amongst the half-castes and native jurymen some of the most efficient and respectable native magistrates in the country, who, under the control of the Supreme Court, at little or no expense to Government, administer justice in inferior offences to the native inhabitants. The introduction of the trial by native juries, at the same time that it has increased the efficiency and despatch of the courts, and has relieved both prisoners and witnesses from the hardships which they incurred from the protracted delay of the criminal sessions, has, independent of the savings it enabled the Ceylon government to make immediately on its introduction, since afforded that government an opportunity of carrying into effect, in the judicial department of the island, a plan for a permanent saving of 10,000 *l.* a year, as appears by my Report, quoted in page 8 of the printed collection of papers herewith sent. No man whose character for honesty or veracity is impeached can be enrolled on the list of jurymen; the circumstance of a man's name being upon the jury roll is a proof of his being a man of unexceptionable character, and is that to which he appeals in case his character be attacked in a court of justice, or in case he solicits his government for promotion in their service. As the rolls of jurymen are revised by the Supreme Court at every session, they operate as a most powerful engine in making the people of the country more attentive than they used to be in their adherence to truth: the right of sitting upon juries has given the natives of Ceylon a value for character, which they never felt before, and has raised in a very remarkable manner the standard of their moral feelings. All the natives of Ceylon who are enrolled as jurymen conceive themselves to be as much a part, as the European judges themselves are of the government of their country, and therefore feel, since they have possessed the right of sitting upon juries, an interest which they never felt before in upholding the British Government of Ceylon. The beneficial consequence of this feeling is strongly exemplified in the difference between the conduct which the native inhabitants of the British settlements on Ceylon observed in the Kandian war of 1803, and that which they observed in the Kandian war of 1816. In the war between the British and Kandian Government in 1803, which was before the introduction of trial by jury, the native inhabitants of the British settlements were, for the most part, in a state of rebellion; in the war between the same governments in 1816, which was five years after the introduction of trial by jury, the inhabitants of the British settlements, so far from showing the smallest symptom of dissatisfaction, took, during the very heat of the war, the opportunity of my return to England, to express their gratitude through me to the British Government for the valuable right of sitting upon juries, which had been conferred upon them by his present Majesty, as appears by the addresses contained from page 16 to page 50*, in the printed papers herewith sent. The charge delivered by my successor, the present Chief Justice of the island, in 1820, contains the strongest additional testimony which could be afforded of the beneficial effects which were experienced by the British Government from the introduction of trial by jury amongst the natives of the island. (*See* that charge in pages 289 and 290 of vol. X. of the Asiatic Journal.) As every native juryman, whatever his caste or religion may be, or in whatever part of the country he may reside, appears before the Supreme Court once at least every two years, and as the judge who presides delivers a charge at the opening of each session to all the jurymen who are in attendance on the court, a useful opportunity is afforded to the natives of the country, by the introduction of trial by jury, not only of participating themselves in the administration of justice, but also of hearing any observations which the judges, in delivering their charge, may think proper to make to them with respect to any subject which is connected either with the administration of justice, or with the state of society or morals in any part of the country. The difference between the conduct which was observed by all the proprietors of slaves on Ceylon

* See the collection of papers explanatory of Sir Alexander Johnston's public measures on Ceylon, which were printed on his resignation of the office of Chief Justice and President of his Majesty's Council on that Island in 1819.

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Ceylon in 1806, which was before the introduction of trial by jury, and that which was observed by them in 1816, which was five years after the introduction of trial by jury, is a strong proof of the change which may be brought about in public opinion, by the judges availing themselves of the opportunity which their charging the jury on the first day of session affords them, of circulating amongst the natives of the country such opinions as may promote the welfare of any particular class of society. As the right of every proprietor of slaves to continue to hold slaves on Ceylon was guaranteed to him by the capitulation under which the Dutch possessions had been surrendered to the British arms in 1795, the British Government of Ceylon conceived that, however desirable the measure might be, they had not a right to abolish slavery on Ceylon by any legislative act. A proposition was however made on the part of Government by me to the proprietors of slaves in 1806, before trial by jury was introduced, urging them to adopt some plan of their own accord for the gradual abolition of slavery; this proposition they at that time unanimously rejected. The right of sitting upon juries was granted to the inhabitants of Ceylon in 1811. From that period I availed myself of the opportunities which were afforded to me, when I delivered my charge at the commencement of each session to the jurymen, most of whom were considerable proprietors of slaves, of informing them of what was doing in England upon the subject of the abolition of slavery, and of pointing out to them the difficulties which they themselves must frequently experience, in executing with impartiality their duties as jurymen, in all cases in which slaves were concerned; a change of opinion upon the subject of slavery was gradually perceptible amongst them, and in the year 1816, the proprietors of slaves of all castes and religious persuasions in Ceylon sent me their unanimous resolutions. to be publicly recorded in court, declaring free all children born of their slaves after the 12th of August 1816, which in the course of a very few years must put an end to the state of slavery which had subsisted on Ceylon for more than three centuries." *

Sir Alexander Johnston was fully aware, when he first introduced trial by jury into Ceylon, that the degree of confidence which the people of the country might be expected to repose in that institution would be proportionate to the conviction which they entertained, that they themselves would be always consulted as to the character and qualifications of those persons whose names were to be enrolled in the list of men qualified to act as jurors, and that neither the local government nor the Supreme Court would ever attempt to exert any undue influence, either in the original formation of that list, or in the subsequent selection from it, of such jurors as might from time to time be required to serve at any criminal session which might be held by the Supreme Court in any part of the island. The great object, therefore, which Sir Alexander Johnston had in view in all the regulations which he made upon this subject, was not only to render it extremely difficult, but to convince the people of the country themselves that it was extremely difficult, if not impossible, either for the local government or the court to exert any undue influence as to the jurors, without their attempt to do so becoming directly a matter of public notoriety and public animadversion.

It appeared to Sir A. Johnston that the surest method of attaining this object was to limit, as far as he could by public regulations, the power of the court and that of its officers; and to place them in every point which was in any way connected with the jury under the constant inspection and control of the people of the country. He accordingly, after much consultation with some of the most enlightened natives of the island, published a regulation, delaring that every man on the island, whatever might be his caste or religious persuasion, had a positive right to act as a juryman, provided he was a man of unexceptionable character, a free man, a permanent resident on the island, and had attained the age

* *See* pages 15 and 16, of the Eleventh Report of the Directors of the African Institution and from page 93 to page 100 of the Appendix of that Report.

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age of twenty-one. Also declaring that the people of the country themselves should be the judges whether a man had or had not those qualifications which by this regulation gave him that positive right. Sir A. Johnston at the same time published another regulation, directing the fiscal or sheriff of each province on the island publicly to make and return to the Supreme Court a correct list of all persons in his province who were qualified as required by the former regulation to act as jurymen. To prevent the possibility of abuse on the part of the fiscal of any province, the following mode of proceeding was observed by the court: As soon as the fiscal of a province had made out and returned to the court a list of all the persons in his province who were duly qualified to serve as jurymen, this list was, by order of the court, published and circulated through every part of the province, for the specific purpose of enabling every inhabitant of the province to make such remarks on it as might occur to him, and to prefer, when necessary, an immediate and public complaint to the court against the fiscal, if it should appear that the fiscal either had omitted out of the list the name of any person whose name he ought to have inserted in it, or had inserted in the list the name of any person whose name he ought to have omitted. After the list had undergone this public scrutiny, it was publicly ordered by the court to be considered by the fiscal as the list of all persons who were duly qualified to act as jurors in his province, and that out of which he was bound to return by rotation all persons who were required to serve as jurors at the criminal sessions held by the Supreme Court in his province. Independent of these precautions against any abuse on the part of the fiscal, every person in a province in which the court was about to hold a criminal session had public notice given him, long before the session was held, that the list in question was always liable to be publicly revised by the court at the commencement of the session, upon any complaint which might be publicly made to the court by an inhabitant of the province, either against the fiscal for any impropriety of conduct in making out the list, or against any individual on the list for any impropriety of conduct in getting his name inserted in that list. Although, therefore, the Supreme Court and its officers, the fiscals, are allowed, for convenience sake, to be the instruments through which the list of persons on the island qualified to act as jurymen is obtained, it is hardly possible, considering the manner in which all their proceedings in this point are watched and controlled by the people of the country, that either the court itself or its officers can exert any undue influence in the selection of jurors without such conduct being immediately known, and becoming a subject of public and general animadversion.

One of the most important of the effects which the introduction of trial by jury produced on Ceylon was to place the European judges and the native jurymen in constant communication in court upon various subjects connected with the administration of justice, and thereby remove from the minds of all classes of the natives the suspicion and jealousy with which they had previously viewed all inquiries made by Europeans into the state of their religion, of their usages, their morals, and their education. As an illustration of this, we insert the following copy of the answer given by Sir A. Johnston to the address presented to him on his departure from Ceylon in 1818, by the chiefs and all the subordinate priests of Buddho, on behalf of themselves and of all the natives of Ceylon professing the Buddho religion. This address was one of the addresses to which Sir Alexander alludes in his letter to Mr. Wynn.

"I feel highly gratified by the respect and esteem which you have shown for me, in coming, notwithstanding the very advanced period of your lives, from so great a distance as you have done, to take leave of me and my family, and to present to me, in your own name, and in that of all the priests of your order, and all the Buddhists within your jurisdiction, an address that cannot be otherwise than gratifying to my feelings.

"The number of the priests of Buddho, and the influence which they exercise over the minds of their followers, from being the ministers of their religion and instructors of their youth, have, for many years, made their religion, their books, their laws, and their institutions, a subject of my serious inquiry. In arranging the code of laws which, in obedience

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to His Majesty's commands, I have compiled for the use of the native inhabitants of Ceylon, it became my duty to compare such of the codes as are the most approved in Europe and Asia, with such of the usages and customs as are the best authenticated on this island; and to adopt such parts only of those codes as are clearly applicable to the state of the country, and as may, therefore, be expected to attain the ends of justice, without militating against the habits and prejudices of the people.

" In performing this duty, I have had frequent communications with you and with the other learned men of your order, and it is with pleasure I take the present opportunity to return to you and them my public thanks for the alacrity with which you have at all times afforded me the information required, and for the unlimited freedom with which you have permitted me to consult the books in your temples, to which I have had occasion to refer; the translations into English which you have enabled me to procure of the three most celebrated histories of your country and your religion, the Mahawanscie, Ragawalle, and the Rajaratnakarre, and the numerous extracts which you have made for me from all your other Sanscrit, Palee, and Cingalese books, together with the different works I have since obtained from the Brahmins of Jaffna, and those of the southern peninsula of India, form a most valuable collection of materials for any person who may have the desire and the leisure to write a general history of your country, and to explain at length the origin and peculiarities of the several castes, customs, and usages which prevail amongst you, and which are so intimately connected with your prosperity and comfort, as to render an accurate knowledge of them not only desirable as a matter of literary curiosity, but absolutely necessary as a matter of duty to every one who may be intrusted with the administration of justice among you, or with the superintendence of the government of your country.

" The rules which the intended code contains are so short and so clear, that the inhabitants will have little or no difficulty either in understanding or applying them. I have, as you know, spared neither pains nor expense for the last sixteen years of my life, in acquiring the most intimate knowledge of the wants and interests of every class of people in Ceylon; it was solely with a view of ascertaining, in a way more satisfactory than I otherwise could have done, the degree of caution and impartiality with which the natives of the island, if admitted to the right of sitting upon juries, would discharge the duties of jurymen, in cases in which their own countrymen are concerned, that I advised the Colonial Government in 1806 to refer a certain description of cases for trial to that committee of priests at Madura, of which you were the principal members. The very judicious manner in which that committee investigated those cases, and the soundness of the principles on which the members of it relied in framing their decisions, satisfied me not only as to the policy but as to the perfect safety of intrusting the natives of Ceylon with the right of sitting upon juries. After this experiment had been tried with success, but not before, I felt myself authorized to proceed to England, and to propose to His Majesty's Government the unlimited introduction of trial by jury into Ceylon, and the formation of a simple code of laws for the use of its inhabitants. The care and attention with which all the worshippers of Buddho, as well as all the natives of other religious persuasions have discharged the duties of jurymen, show that they not only understand the nature of that mode of trial, but also that they are fully competent to enjoy the privileges which it gives them, with credit to themselves and with advantage to their countrymen. The experience which you have had for seven years of the practical effects of that establishment, and the information you have derived from the Supreme Court, as well as from the book upon trial by jury, which I have caused to be translated into Cingalese and Tamul, have naturally impressed you with the highest respect for that simple and much admired mode of trial. My observations, aided by that of some persons who are the best qualified to form an opinion upon the subject, have suggested to my mind several improvements in the present system of administering justice amongst the natives of Ceylon. Should His Majesty's Government, while I am in England, be pleased to command me to submit to them my opinion upon the subject, I shall be happy to point out for their consideration such alterations as I am aware, from my

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my communications with you, are desired by the inhabitants and will be highly beneficial to to the interest of the island.

"The ultimate effect which any system of laws is calculated to produce in a country depends, in a great degree, upon the state of society, and upon the system of religion and morals which prevail in that country. As it has always been my wish to see the same effect produced in this country as is produced invariably in England by an independent and well administered system of justice, it has been my endeavour always to approximate, as much as circumstances would permit, the state of society and the systems of religion and morals which prevail in Ceylon to those which prevail in England. With a view to the state of society in Ceylon, I have, since 1806, left no means untried to encourage the proprietors of domestic slaves to adopt such a resolution as they, at my suggestion, unanimously adopted in July 1816; and it is a subject of sincere congratulation to all the friends of humanity in Ceylon, whether they profess the faith of Buddho, or that of Mahomet or Brahma, that the unanimity with which that resolution was passed was so great as to leave no doubt of its being the sense of the people on this island, that the system of domestic slavery is equally destructive to the morals of the slave, as it is to those of the master and his children. With a view to the different systems of religion and morals in Ceylon, I, twelve years ago, after much consultation upon the subject with some of the most enlightened of the Buddhists, caused the summary of the evidences of Christianity, which was drawn up by one of the ablest of our divines, the late Bishop of London, to be translated into Cingalese, in order that you yourself might have a fair opportunity of comparing the evidence upon which we form our belief in Christianity with that upon which you form your belief in Buddhism. The conversation which many of you have frequently had with me upon those points, as well as upon the beneficial effects which may finally be expected from the general extension of Christianity, both upon the present and the rising generation of the people, have afforded me an ample opportunity of becoming acquainted with the liberal sentiments which you entertain, when properly treated, upon all questions of religion; and I reflect with satisfaction on the ready assistance which I received from many of the most rigid of the worshippers of Buddho in the translation to which I have alluded. The zeal with which the two priests of Dodanduwae have insisted upon accompanying me to England, under circumstances which to most men would have been discouraging, is at once a mark of the confidence which your body repose in me, and of the spirit of inquiry and of the desire of information which has arisen amongst them. These young men will, no doubt, from the knowledge which they possess of your literature and religion, and the variety of their other acquirements, be of considerable use to me in translating into Cingalese the code which I am about to submit to His Majesty's Government in England, and will have the best opportunity that could have occurred to them of becoming acquainted with the real effect which the principles of our religion unquestionably have had in enlightening the understanding, and improving the morals of the inhabitants of that most celebrated country.

"I have the honour to be, &c.

"*Alexander Johnston.*"

(C.)

COPY of a MEMORANDUM drawn up by Sir *Alexander Johnston* for the late Marquis of *Londonderry*, of some alterations which he thought advisable in the System for administering Justice in *India*. The plan, in as far as it related to the Supreme Courts to be tried in the first instance in the Territories under the Madras Government.

THE Supreme Court at Madras to consist of six judges, to have a criminal jurisdiction over all the territories and persons, natives as well as Europeans, under the Madras government.

The

The judges to make frequent criminal circuits throughout those territories, having native grand and petty juries for the trial of native offenders at each place where they hold their criminal sessions.

The Sudder Adawlut (the Supreme Civil Court) at Madras to consist of the judges of the Supreme Court, and a certain number, as at present, of the Company's senior civil servants.

A person, either from the Scotch, the English, or the Irish bar, to be attached as legal adviser to each of the four provincial courts under the Madras government.

An Act to be passed, specifying what part of the English law shall apply to the British and other Europeans in India.

That a Hindoo code, for the use of all the Hindoos under the Madras government, be forthwith drawn up in communication with the best informed Hindoos in each of the provinces under the Madras government.

That a Mahomedan code, for the use of all the Mahomedans under the Madras government, be drawn up in communication with the best informed Mahomedans, in each of the provinces under that government.

That a regulation be framed, specifying the nature of the different Acts, which are to be deemed criminal offences, and the nature of the punishment which is to be attached to each of those acts.

That the Hindoo and Mahomedan code, and this last-mentioned regulation, be translated into all the different languages which prevail throughout all the British territories under the Madras government, and that they be published throughout those territories.

That all the respectable natives of the country be admitted to act as frequently as possible as grand and petty jurymen, as judges, and as magistrates, under the superintendence and control of the Supreme and Company's courts.

That the proceedings in the Company's courts be carried on in the most usual language of the people of the country in which they are established; that writing be dispensed with as much as possible in those proceedings; and that all suits be decided as near as possible to the homes of the parties and witnesses who are concerned in them.

That a code be made of all the different maritime customs and laws, of all the different classes of natives of India who trade with any part of the coasts of the Company's territories in India, and that it be translated into all the different languages which are in general use amongst those people, and that it be made as public as possible amongst them.

That native as well as European judges be appointed at the most convenient ports, to decide, with the least possible delay and expense, all such maritime cases as may be brought before them.

That a right of appeal be allowed from all the superior courts in India to the court in England for hearing India appeals in all cases of a certain amount, and a certain description.

That the court in England for hearing India appeals be composed of the judges who retire upon pensions from the Supreme Courts in India, Ceylon, the Isle of France, and the Cape of Good Hope, and of some of the Company's retired civil servants, who have been judges of the Courts of Sudder Adawluts in India; and that it be perfectly understood, that the judges are to receive no other remuneration than their pensions for belonging to this court.

That the President and one other of the members of His Majesty's Privy Council, being a lawyer of professional eminence and high rank, be appointed by His Majesty to preside in this court.

That a certain number of the judges of this court be in regular attendance for the purpose of trying all such cases of appeal as may come before them.

That they deliver into both Houses of Parliament, at the commencement of each session, a statement of the number of cases which have come before them, the number which they have decided, and the number, if any, that are in arrear.

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That they also deliver into both Houses of Parliament, once every year, a report of the state of the system for administering justice in India, specifying what defects they have observed in that system, and what improvements they propose.

That the judges of all the different Supreme Courts in India be appointed as the judges in England are appointed, not during pleasure, but during good conduct, and that they be removable from their offices only by addresses from both Houses of Parliament to the King.

THIS Paper was drawn up by Sir Alexander Johnston, at the request of the present Master of the Rolls, who agreed with Sir Alexander in thinking it would be an improvement in the present system of Indian judicature, even were no further alteration introduced, to unite the Chief Justices of the Supreme Courts in British India with the Judges of the Sudder Adawluts. As this Paper is founded upon a shorter one, which was delivered to Lord Londonderry in 1822, it is added to the foregoing Paper, for the purpose of showing the utility of uniting the King's and Company's Judges in India in the manner proposed in the third clause of that Paper.

THE measure of making the Chief Justice of the respective King's Supreme Courts at Bombay, Madras, and Calcutta, members of the respective Company's Sudder and Nizamut Adawlut Courts, at each of these Presidencies, will be attended with very great advantages—

1st. To the King's judges of the Supreme Courts.

2d. To the Company's judges of the Sudder and Nizamut Adawlut Courts.

3d. To the native inhabitants of the country.

4th. To the East-India Company's government at Bombay, Madras, and Calcutta.

5th. To the King in Council, as a court of appeal from the Courts of Sudder and Nizamut Adawlut at those Presidencies.

1st. To the King's judges of the Supreme Courts, for the following reasons:

It will afford them the most efficient means of obtaining authentic information upon all local questions; make them thoroughly acquainted with the religious and moral feelings of the natives of the country; with their prejudices; with all the peculiarity of castes which prevail amongst them; with the manners and customs of the different inhabitants, to whatever caste or religious pursuasion they may belong; with the various revenue and police regulations of the local government; with all the modifications of the Hindoo law, as it prevails in civil cases, and those of the Mahomedan law, as it prevails both in civil and in criminal cases, throughout the whole of the territories which are under the respective Presidencies, and thereby enable them to exercise the different judicial powers with which the King's Supreme Courts are invested at Bombay, Madras, and Calcutta; in such a manner as to attain the real and substantial ends of justice, without militating against the feelings and prejudices of the people.

2d. To the Company's judges of the Sudder and Nizamut Adawlut Courts, for the following reasons:

It will afford those judges who have not had a legal education, by personal and habitual communication upon the subject with the King's judges, the most efficient means of becoming thoroughly acquainted with the general and fundamental principles of law, and with the high feelings of judicial independence which so peculiarly characterises the British judges; and will thereby give them additional confidence in their own judgments, and a higher opinion of their own independence, as judges; and inspire the natives of the country with more implicit confidence in the wisdom and impartiality of their decisions.

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3d. To the native inhabitants of the country, for the following reasons:—

It will not only make them acquire, but make them believe that they have acquired, an additional security for their lives, their liberty, their property, their religion, and their ancient customs; to such of them as live within the local jurisdiction of the respective King's courts, by making them believe that the judges of those courts possess not only what they now allow them to possess,—well-informed judicial understandings, and a high sense of judicial independence, but also that which they at present do not conceive them to possess,—a thorough knowledge of the native manners, local customs, native laws, religion, and caste. To such of them as live without the jurisdiction of the King's, and are solely under that of the Company's courts, by making them believe that by appeal at least to the Sudder and Nizamut Adawlut's, of which the Chief Justice of the Supreme Court is a member, they will receive the same protection from the judges of those courts as they would do from the judges of the Supreme Courts, an advantage of immense importance, when it is recollected that every native of the country, not residing within the local jurisdiction of one of the Supreme Courts, is subject to be tried for every criminal offence, capital or not, with which he may be charged, according to the very obscure and very uncertain rules of the Mahomedan law; without a jury, and by judges, who, however able and respectable they may be, are sent out to India at a very early period of their life, as mere civil servants of the East-India Company, and without having had any previous legal education or practice to prepare them for the judicial offices to which they are afterwards appointed in India.

4th. To the East-India Company's governments at Bombay, Madras, and Calcutta, for the following reasons:—

1st. It will, by making the Chief Justices of the King's Supreme Courts members of the Company's Courts of Appeal, the Sudder and Nizamut Adawlut's, both in criminal and in civil cases, unite in spirit and feeling, though not in name, the King's system with the Company's system of administering justice in India. In criminal cases, by putting an end, in some degree, to the strange and anomalous distinction which at present prevails between the situation of those native subjects of the East-India Company who live within, and those who live without, the local jurisdiction of the Supreme Courts; the former, at present, if they be charged with the commission of a criminal offence, having the advantage of being tried for that offence according to the clear and precise rules of the English criminal law, by King's judges, who have had a regular legal education, and by a jury of Englishmen; the latter, at present, if they be charged with the commission of the very same kind of offence, being deprived of all those advantages, and being liable to be tried according to the obscure and uncertain rules of the Mahomedan criminal law, by civil servants of the East India Company, who never have had any legal education, and without a jury of any description whatever. In civil, by extending in all cases of an appealable amount, to those native subjects of the East-India Company who live without the jurisdiction of the Supreme Courts, the advantage which at present is enjoyed by those only who live within the jurisdiction of the Supreme Court, of having their civil suits decided in appeal by a King's judge, who has had a regular legal education.

2d. It will also, by affording the additional security to the natives which has just been described, in all cases, as well in those which relate to the questions of land, agriculture, and manufacture, as in those which relate to revenue, improve the state of the agriculturers, manufacturers, and traders, and relieve the people of the country from many of the oppressive measures which are adopted towards them by the native subordinate agents of Government, who at present are so apt to identify, in the opinion of the European collectors, the necessity of oppressive acts with the prompt and certain collection of the revenues, as in some degree to make the collectors themselves connive at their misconduct, for fear of diminishing the amount of the revenue collected in their respective districts.

3d. It will also, by thus rendering more secure the lives, the liberty, and the property of all the native subjects of the East-India Company, whether they live within or without the

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local jurisdiction of the King's Supreme Courts of Bombay, Madras, and Calcutta, increase the interest which those native subjects feel in the permanent continuance of those governments; at the same time that it will, in consequence of the union of the two systems of administering justice, diminish the probability and the frequency of those collisions between the King's courts and the Company's local governments, which, as long as the present state of the judicial establishments in India remain, it is very difficult, if not impossible, to prevent, and which must always inevitably diminish the authority both of the respective courts and of the respective governments in the eyes not only of the native subjects of the East-India Company themselves, but also in the opinion of those native governments which are established in different parts of Asia.

5th. To the King in Council, as a court of appeal from the Courts of Sudder and Nizamut Adawlut, at Bombay, Madras, and Calcutta, for the following reasons:—

From the Chief Justice of the Supreme Courts, who is a member of the Sudder and Nizamut Adawlut, being thoroughly acquainted with the nature of the proceedings which take place before the King in Council in England, the Courts of Sudder and Nizamut Adawlut will become aware, not only of the information which ought to be sent home by them to the King in Council, in order to enable them to form their opinion without delay upon the cases appealed to them, but also of such steps as it is their duty to instruct the natives who are concerned in these appeals to adopt, in order to bring the appeals to a speedy decision and hearing in England, and thereby prevent the recurrence in future of such delay and inconvenience as has hitherto been incurred, both by the parties interested and by the government of the country, in those cases between natives of India which have come by appeal before the King in Council from the three Courts of Sudder and Nizamut Adawluts of Bombay, Madras, and Calcutta. It was for these reasons that the late Marquess Cornwallis and the late Lord Melville were of opinion that the addition of the King's judges of the respective Supreme Courts to the Company's judges of the respective Sudder and Nizamut Courts would be a great improvement in the system for the administration of justice in the Company's territories in India. It was for the same reasons that the late Lord Melville, when, as Secretary of State for the War and Colonies, he framed in 1801 a system for the administration of justice in the King's possessions on the Island of Ceylon, made the chief and puisne justices of the Supreme Courts on that island members of the High Court of Appeal, which had formerly been composed of civil servants in the King's service, in the same way as the Courts of Sudder and Nizamut Adawluts in the Company's territories are now composed of civil servants in the Company's service, and which High Court of Appeal has the same sort of appellate jurisdiction over the inferior courts composed of King's civil servants in different parts of the Island of Ceylon as the Courts of Sudder and Nizamut Adawlut exercise over the different inferior courts composed of Company's civil servants in different parts of the Company's territories in India. It was for the same reasons that the late Marquess of Londonderry, in 1810, informed Sir Alexander Johnston that he was perfectly convinced, from his long experience in Indian affairs, that the manner in which the High Court of Appeal was constituted in the King's possessions in Ceylon, partly of the King's judges and partly of civil servants, was preferable in every respect to that in which the Courts of Sudder and Nizamut Adawlut in the Company's territories were constituted, viz. solely of the Company's civil servants. It was for the same reason that Sir Alexander Johnston, (while, as Chief Justice and President of His Majesty's Council in Ceylon, he was employed in revising the judicial establishments of that island in 1810, after twelve years' experience of the advantageous effects which had been produced on Ceylon by the union of the judges of the Supreme Court with the civil servants in the High Court of Appeal in Ceylon,) advised His Majesty's Government to continue this method of constituting the Court of Appeal on Ceylon, as one which was of the greatest advantage, not only to the King's judges and the civil servants themselves, but to the natives of the country and the government of the island.

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THIS Paper was written in 1831. It contains a Copy of the Paper which, in 1826, Sir Alexander Johnston gave to Mr. Wynn, then President of the Board of Control, and to some of the other Members of the Privy Council; and also a Copy of some Suggestions relative to the Appellate Jurisdiction of the King in Council in Indian Appeals, which Sir Alexander, at the request of the Lord Chancellor, Lord Brougham, gave to his Lordship in November 1830.

THE number of appeals to the Privy Council from the three courts of sudder adawlut, in India, which have remained for so many years unheard and undecided, have been productive of the greatest expense and inconvenience to the parties who are interested in them, and are likely to diminish, in the opinions of the natives of India, the respect which they would otherwise entertain for the administration of justice by British judges in British courts of judicature; we therefore conceive it will be interesting to those who are connected with India to know the different steps which have been taken by Sir Alexander Johnston, the late President of His Majesty's Council in Ceylon, since his return to England, with a view of remedying the inconveniences which have been felt by the natives of India, in consequence of the great delay which has hitherto occurred in deciding those cases which have been appealed from the several courts of sudder adawlut in India to the King in Council in this country; we therefore publish the paper upon the subject, which was written and given to Government by Sir Alexander Johnston, in 1826, as appears in his evidence before the Committee of the House of Lords.

The real object of the British constitution in considering the King in Council as a court of appeal from the different courts established in all the British colonies is, to secure, through those courts, and their respective judges, for all the inhabitants of those colonies, whether Europeans or natives, by placing them directly under the protection and superintendence of His Majesty in Council, the strict observance of those different systems of law which the legislature has deemed wise to establish amongst them.

As it is, therefore, the duty of the King in Council, as a court of appeal, to afford that protection to the inhabitants of those colonies, by affirming all such decisions of the colonial courts as may be in conformity with those systems of law, and by reversing all such decisions as may be in opposition to the same systems of law, it is obvious that the King in Council, in order that they may discharge their duty as a court of appeal with the least possible delay, expense, and inconvenience to the parties who are concerned in appeals, and also, in order that they may, at the same time, by the soundness and promptitude of their decisions, encourage those who really believe themselves to be aggrieved, discourage those who put in an appeal merely for the purpose of gaining time or oppressing their adversary, should themselves not only possess a thorough knowledge of all the different systems of colonial law, but should always have sufficient leisure to attend to each case of appeal as soon as it is brought before them.

The King in Council, in addition to the appellate jurisdiction which they exercised over the British colonies in the West-Indies, and in North America, previous to the year 1773, have, since the year 1773, been, from time to time, vested, by different Acts of Parliament, royal charters, and royal institutions, with an immense appellate jurisdiction over all the colonies which have, since that period, been acquired by the British arms, at the Cape of Good Hope, on the Isle of France, on the island of Ceylon, and in the East-India Company's territories in the East-Indies.

The appellate jurisdiction with which the King in Council has been vested since the year 1773, in as far as it relates to the colonies which have just been mentioned, extends over eleven supreme courts; viz. eight King's and three Company's courts, which have been established in the King's possessions at the Cape of Good Hope, in the Isle of France, and in the island of Ceylon, and in the East-India Company's possessions at Calcutta,

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Madras, Bombay, and the Prince of Wales's Island. In order to understand thoroughly the nature of these different courts, as well as the nature of the different systems of law according to which they are bound to proceed, it may be necessary to consider them in detail.

The following are the different courts in those colonies over which the King in Council exercises an appellate jurisdiction.

The following four are established in King's settlements, viz.—

The King's Court at the Cape of Good Hope.
The King's Court at the Isle of France.
The King's Supreme Court of Justice, } In Ceylon.
The King's High Court of Appeal, }

The following seven are established in the East-India Company's settlements:

The King's Supreme Court at Calcutta.
The King's Supreme Court at Madras.
The King's Supreme Court at Bombay.
The King's Recorder's Court in Prince of Wales's Island.

The Company's Courts, called,
The Sudder Dewanee Adawlut, at Calcutta.
The Ditto, at Madras.
The Ditto, at Bombay.

These three last courts are established by the East-India Company, under the authority of different Acts of Parliament; these are the three high courts of appeal established at Calcutta, Madras, and Bombay, to which an appeal lies in certain cases from every inferior court established by the Company in every part of the three presidencies of Calcutta, Madras, and Bombay, consisting in all of upwards of 80 separate courts, composed of upwards of 120 judges, and from which three Company's high courts of appeal an appeal lies, in cases of a certain amount, to the King in Council.

The jurisdiction of the court at the Cape of Good Hope extends over all cases, all civil persons, and all lands in that colony.

The jurisdiction of the court at the Isle of France extends over all cases, all persons, and all lands in that colony.

The jurisdiction of the supreme court, and that of the high court of appeal in Ceylon, taken together, include every case whatever, of a certain amount, which can occur on that island.

The jurisdiction of the three King's supreme courts at Calcutta, Madras, and Bombay, and that of the three Company's high courts of appeal, called Sudder Adawluts, taken together, include every case, of a certain amount, that can occur within the three presidencies of Calcutta, Madras, and Bombay.

The jurisdiction of the King's Recorder's Court, on the Prince of Wales's Island, and that of the subordinate courts in the settlements of Malacca and Singapore, include all cases that can occur, of a certain amount, within those three settlements.

The system of law which prevails in each of the above colonies is as follows:

At the Cape of Good Hope:—The law in force in this colony is what is called the Dutch Roman law, modified in some instances by the colonial regulations made by the Dutch, and the English colonial governments respectively.

Isle of France:—The law in force in the Isle of France is the Roman law, as modified during the French revolution in France, and as still further modified by the colonial regulations made by the French and the English colonial governments respectively.

Island of Ceylon:—1st. The law in force in the island of Ceylon, in as far as it relates to the Dutch, English and Cingalese inhabitants of the maritime parts of that island, is the Dutch Roman law, modified by the colonial regulations of the Dutch and English Governments.

2d. In

2d. In as far as it relates to all the Mahomedan inhabitants on the island, the Mahomedan law, as observed amongst the Mahomedans of Arab descent, who inhabit the coasts of Malabar and Coromandel.

3d. In as far as it relates to the *Cingalese* inhabitants of the Kandian country, or interior of the island, the Buddhist law (with some local modifications), as observed amongst the Buddhist inhabitants of the Birman empire and Siam.

4th. In as far as it relates to the Hindoo inhabitants of the north-west, north and north-east parts of the island, the Hindoo law (with some local modifications), as observed amongst the Hindoo inhabitants of the Peninsula of India.

5th. In as far as it relates to the people called Morquas, who inhabit two considerable provinces in Ceylon, the one on the south-east, and the other on the north-west side of the island, the Hindoo law, as observed amongst the Hindoo inhabitants on the coast of Malabar.

6th. In as far as it relates to maritime causes between the natives of India, the Mallealun and *Malay* maritime law.

The East-India Company's three presidencies of Calcutta, Madras, and Bombay, and the Settlements of the Prince of Wales's Island:—

The law in force in the whole of the above territories of the East-India Company, in as far as it relates to the European inhabitants, is the English law, as introduced into those territories, and modified by the several charters of justice, by which the several King's courts have been established in them. In as far as it relates to the immense population of the Hindoo inhabitants, the Hindoo law; and in as far as it relates to the Mahomedan inhabitants, the Mahomedan law; both these laws subject, however, to the modifications which have been introduced into both of them by the East-India Company's local regulations.

From the above considerations it appears, First, that the King in Council, as a court of appeal from the eleven supreme courts which have just been mentioned, exercises ~~an~~ appellate jurisdiction which, directly and indirectly, in as far as it relates to persons, includes a population of upwards of 80 millions of people; in as far as it relates to territory, includes countries, which, independent of the Cape of Good Hope, and the Isle of France, extend to upwards of 1,400 miles in length, and nearly as many in breadth, and which comprises the chief part of that vast region which is bounded by the Indus in the north-west, the great range of the Thibetean Mountains in the north-east, and by the Ocean on the south-east and south-west; and in as far as it relates to the nature of the cases which may be brought before the King in Council by appeal, includes every question of contract, inheritance, land and revenue, of a certain amount, in which, besides all the great interests of the Crown, and of the nation, not only the immense revenue of the East-India Company, upwards of 15,000,000 *l.* sterling a year, and the tenure of every foot of land in their dominion, but also every religious and moral feeling, as well as every prejudice of the people of every religion in the country, are most deeply concerned.

Secondly, That the King in Council may, as a court of appeal from those courts, be called upon to decide questions of the utmost importance to the prosperity and tranquillity, not only of the Cape of Good Hope, the Isle of France and Ceylon, but of every part of India; to consider questions, not only of English, French and Dutch colonial laws, but some of the most intricate questions of Hindoo, Mahomedan, and Buddhist law. That their construction of such laws must form the rule of decision as to those laws, not only for every court superior, as well as inferior, established at the Cape of Good Hope, Isle of France and Ceylon, but also for every court superior, as well as inferior, established in every part of India; and finally, that they are called upon for the due protection of upwards of 80,000,000 of inhabitants to exercise a vigilant superintendence, and a prompt control over upwards of 150 judges, situated between 14,000 and 16,000 miles off from the mother country.

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Considering the variety of the different jurisdictions, and of the different systems of law which have been described, it seems obvious, that the persons who from their local knowledge and their leisure are the best qualified for deciding cases in appeal, from the Isle of France, Cape of Good Hope, Ceylon, and the Company's possessions in the East-Indies, are those King's judges who, after having held in the King's and Company's colonies, for many years, some of the highest and most responsible judicial situations in the gift of the Crown, are allowed to retire upon pensions granted to them for life by the Crown, not only as a reward for their services, but as a mark of public approbation. Their having been appointed to those offices is a proof that they originally were men of known character in their profession. Their having been allowed to retire from office upon pensions is equally a proof that their conduct, while in office, was such as deserved the approbation of their Government. Their legal education makes them aware of the sort of local information which it is necessary for them to acquire. Their long residence in the colonies, and the influence they derive from their judicial situations, afford them the very best opportunity of acquiring the most authentic information; and the age at which most of them are appointed to those situations enables them to avail themselves of that opportunity while in the full vigour of their understanding.

As it is, therefore, highly advisable that the King in Council be enabled to avail themselves, as a court of appeal, of the assistance of these judges; and as objections may possibly occur to the King's appointing them members of the Privy Council, it is proposed that His Majesty in Council be empowered by a legislative act, from time to time, to call upon such of these judges as he may think proper to act as legal assessors to the King in Council whenever they sit as a court to hear appeals from the colonies.

A court of appeal so constructed must always be efficient, and must always be popular in the colonies; it must be efficient, because it must always have in it at least some members who are thoroughly acquainted with the peculiar system of colonial law, according to which the court is bound to decide, and with the local circumstances of the people amongst whom that law prevails; who, from long residence in colonies, feel an interest in colonial questions; who, from having retired from office on pensions, have leisure to attend the court whenever their presence may be necessary; and who, from not having the excuse which other members may have, of official avocations, want of time, and want of local knowledge, must feel themselves to be acting under a much higher degree of responsibility to the public, both as to the soundness and to the promptitude of their decisions.

It must always be popular in the colonies, because it is composed of men, who, as the inhabitants of the colonies themselves know, were originally appointed judges in the colonies by the Crown, with great salaries, and with high rank, for the express purpose of securing for the inhabitants a strict observance of their laws, and for affording to the inhabitants the most ready protection and redress against any oppression which might be offered to their persons or their property; of men, to whom the inhabitants themselves have always, for this reason, been accustomed to look up as to the most faithful of their protectors; of men, whom the inhabitants themselves believe to feel an interest in their welfare; whom they know to be thoroughly informed with respect to their laws and customs; and who, they therefore conceive, will be always ready and able to decide upon such cases as are brought before them in appeal from the colonies, with the least possible delay, expense, and inconvenience to the parties who are concerned.

The measure of associating the colonial judges who retire upon pensions from their office as legal assessors, with the members of the Privy Council, will be gradually attended with the most beneficial effects, as well to the colonies themselves as to His Majesty's Government. To the colonies, because it will afford to the colonies, from time to time, as the judges respectively return to England, and retire upon their pensions, an opportunity of having the state of their laws, and that of the administration of justice amongst them, brought before His Majesty in Council in the most authentic shape, by persons in whose knowledge, integrity, and judgment, they have the fullest confidence.

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To His Majesty's Government, first, because it will enable the King in Council to make a perfect collection of all the different colonial systems of law which prevail in the British colonies, and to ascertain, from the most authentic sources, what effect each of those systems has in its respective colonies, what alteration is required in those systems, and how such alterations may be introduced with advantage to the people.

Secondly, because it will enable His Majesty in Council to derive their information from men whose legal education in England, and whose local experience in the colonies, qualify them to give their opinion upon the subject, both as English lawyers, conversant with the principles of the British constitution, and as colonial lawyers, conversant with the real state of the British colonies; and therefore qualify them to apply the general principles of the law, and the general principles of the British constitution, to the local peculiarities and to the state of society in the British colonies.

Thirdly, because it will accustom the colonies to consider the King in Council as a tribunal in which their respective interests are thoroughly understood; in which every question relative to them will not only excite a proper degree of interest, but will receive the earliest consideration, and in which they may, therefore, be certain of receiving immediate redress on any occasion in which they may feel themselves aggrieved.

As many cases in which both appellants and appellees are natives of India have been for many years in appeal before the King in Council, from the courts of sudder adawluts of Bombay, Madras and Calcutta, and as they have not been prosecuted before the King in Council owing to the parties concerned not having appointed any agents to act on their behalf in England, it is proposed, in order to get rid of all the cases of this description which are now in appeal, and in order to prevent, for the future, the very great inconvenience which has occurred from the natives of India not having appointed agents in England, and from their ignorance of the steps which they ought to take in England when they appeal to the King in Council, that the East-India Company should appoint in England one of the civil servants, who is thoroughly acquainted with the proceedings of the zillah, provincial, and sudder adawlut courts, under the three presidencies of Bombay, Madras, and Calcutta, whose duty it shall be, acting under instructions, to take care that all cases of appeal from the three above courts to the King in Council, in which natives of India are appellants and appellees, shall, provided the parties themselves shall not have appointed agents to act for them in England, be immediately brought forward before the King in Council, and be dealt with by them as the circumstances of the case may require.

Although what has been said applies more immediately to the Cape of Good Hope, the Isle of France, Ceylon, and the East-India Company's possessions in India, the plan which has been proposed is just as applicable to the British colonies in North America, the West-Indies, Trinidad, St. Lucia, Demerara, and Berbice. The cases which are appealed from the West-Indies being mostly cases of equity, those from North America and St. Lucia cases either of the ancient or of the more modern French law, those from Trinidad of the Spanish law, and those from Demerara and Berbice of the Dutch law, and therefore as much within the knowledge of those judges who have been alluded to, as the cases which come from the colonies, with which they have been more immediately connected.

We understand that in consequence of the suggestions contained in this paper, Mr. Clarke, of the Madras civil service, has been employed for some time by the Court of Directors, to prepare the whole of the Indian appeal cases so long in arrear before the Privy Council, for the consideration of the Privy Council, and that most, if not the whole of them, having been so prepared, Sir Alexander, about a year ago, submitted to Government the following plan, the object of which is, by means of the Indian judges who are retired to this country upon their pensions, not only to get rid of, without any additional expense to the public, and without any delay whatever, all such cases as are now in arrear, but also to prevent for the future all arrear in such cases, and to enable the British Government and the British Parliament to become thoroughly acquainted with all those systems of local laws which prevail amongst the different classes of natives in India, and which form the laws according

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according to which the courts in India, as well as the Privy Council, are bound to decid all cases in which their property and their interest are directly concerned.

1st. That the Government do forthwith appoint a certain number of the Indian judges who are retired in England upon their pensions, to act either as members of the Privy Council, or as assessors to the Privy Council, in hearing and deciding upon all cases in appeal from any of the courts established in the East India Company's territories in India, on the island of Ceylon, on the Mauritius, and at the Cape of Good Hope.

2d. That these judges do forthwith draw up, in communication with the Lord Chancellor, the President of the Council, and the President of the Board of Control, such rules and orders as may enable the Privy Council to decide upon, without delay, the appeal cases from India, which have been so long pending, and to hear and to decide, as soon as they come before them, all future appeals from India.

3d. That they sit, from day to day, till they have got rid of all the appeals from India which are now pending.

4th. That one of them shall always be in attendance at the office of the Privy Council, and shall report to the Council, as soon as any appeal arrives from India, the nature of such appeal, and the steps which it may be necessary to take for the immediate hearing and decision of that appeal.

5th. That they forthwith draw up, for the information of the Council and the public, a full statement and explanation of the history and nature of the different systems of law which prevail amongst the inhabitants of British India, of the Island of Ceylon, of the Mauritius, and of the Cape of Good Hope; and amongst all the natives of Africa, Arabia and Asia, who navigate the Indian Ocean and the adjoining seas, and who trade with any part of the coast of Malabar and Coromandel, and with any part of the coasts of Ceylon, and the Mauritius, and Cape of Good Hope.

6th. As the specific grounds upon which the King in Council form their judgment in cases of appeal from India, ought, as soon as possible after that judgment has been given officially, to be made known to all the natives of India who are subject to the British courts in India, a printed copy of the published report of each case be officially sent by the Court of Directors to every sudder adawlut, provincial and zillah court, in India, with a positive order that such a report shall be forthwith, under the superintendence of the court, translated into each of the country languages which are in the most common use in the province in which the court is stationed, and publicly read and explained by an officer of the court to the natives of the country, in such a manner as the grounds of the decision of the King in Council being once understood by the natives themselves, may prevent them in future from incurring the unnecessary expense and delay of an appeal upon any point of law upon which the King in Council may have already given their opinion.

(E.)

A PAPER containing the Plan adopted by Sir Alexander Johnston on Ceylon, for collecting Materials for framing a Hindoo and Mahomedan Code, for the use of the Hindoo and Mahomedan Natives of that Island.

At a Council held at the King's House, 31st December 1811;

Present,—His Honour the Lieutenant Governor, the Honourable the Chief Justice and President of His Majesty's Council, the Honourable the Puisne Justice, the Honourable the Chief Secretary to Government, the Honourable the Commissioner of Revenues;

AN extract of a letter from the Earl of Liverpool to his Excellency the Governor of these settlements is read; communicating his Royal Highness the Prince Regent's pleasure, that all the different classes of people who inhabit the British settlements on the island

island should be governed as nearly as circumstances will admit, according to their ancient customs, and that the Chief Justice do prepare for their use a short and simple code of laws founded upon those customs, and divested of all technical languages.

The Chief Justice and President of his Majesty's Council thereupon submits to the Lieutenant Governor in Council the following as the plan which he intends to adopt, should it meet with their approbation for carrying into effect the wise and benevolent object which his Royal Highness has in view:—

1st. The Chief Justice will, with the concurrence of his Honour the Lieutenant Governor, immediately select a certain number of persons from each district to report to him upon the nature of the laws and customs which at present prevail in the different parts of this island, and to point out to him such alterations in them as they may think expedient.

2d. The persons whom the Chief Justice will select for this purpose will be such only as are the most distinguished in their respective districts for their integrity and good conduct, as well as for their thorough knowledge of the religion, customs, habits, and local interests of the people.

3d. As soon as the Chief Justice shall have received the reports from the several districts, he will draw up from the information contained in them, such a code of laws as the Prince Regent has commanded.

4th. The Chief Justice will cause a Dutch, Portuguese, Cingalese, and Tamul translation of this code to be publicly exhibited for one year in each district, in order that every one of His Majesty's subjects in these settlements may have the fullest opportunity of considering the code, and making such objections to it as may occur to them.

5th. The Chief Justice having thus taken the sense of His Majesty's subjects upon the code, and made such alterations in it as the further information he shall have received in the course of the year may have rendered necessary, will then submit it for the consideration of the Governor in Council in order that they may forward it to his Royal Highness the Prince Regent for his royal approbation.

The above plan being fully approved of by all the members of Council, the Lieutenant Governor in Council orders that it be published, together with the proceedings held thereon, for the information of His Majesty's subjects on this island.

(F.)

COPY of a LETTER from the Right Honourable *C. Grant*, to Sir *Alexander Johnston*.

Sir, India Board, 29th March 1832.

I TAKE leave to address you on a subject, the importance of which will, I trust, sufficiently apologize for requesting your attention, and, if you please to give it, your assistance in bringing it to a satisfactory settlement.

The Board have had, for some time, under their consideration the state of the outstanding appeals to the King in Council from the Sudder Courts in India.

On the 22d February 1831, a letter was addressed by the Court of Directors to the Indian governments, desiring to know their sentiments on the best course to be pursued; and especially in reference to a suggestion that counsel should be appointed for both parties in this country, by the Court of Directors, to carry on the appeals to a decision. The Court particularly wished to ascertain in what light such a measure (to be tried in the first instance experimentally) was likely to be received by the natives of India.

Answers have been received from Madras and Bombay.

No answer as has yet been received from the Bengal government; but the Board are strongly impressed with the necessity of some efficient measure being resorted to for clearing off those appeals, and for the disposal of such as may hereafter be preferred.

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A memorandum on the subject has, at my request, been prepared by Mr. Richard Clarke, a gentleman who, from particular circumstances, is minutely informed of the situation of these outstanding appeals. In order to assist their judgment as to the best mode of proceeding, the Board are desirous of submitting these papers to some gentlemen of general ability and information, as well as of local experience, requesting them to consider the subject in all its parts, and to report to the Board their opinion and observations.

Presuming that you may not feel disinclined to afford your valuable aid to the Board in their deliberations on this important subject, I take the liberty of mentioning that the other gentlemen whom I address on this occasion are Sir Edward Hyde East and Sir James Mackintosh, and I should be happy to know if you will consent to meet them at such times as may be agreed upon, in order to carry into effect the object in question.

I have the honour to be Sir,
Your obedient humble Servant,
C. Grant.

COPY of Sir *A. Johnston's* Answer to the Right Honourable *Charles Grant.*

Sir, 19, Great Cumberland Place, 30th March 1832.

I HAVE the honour to acknowledge the receipt of your letter of this morning, and beg leave to assure you that I shall be most happy to afford the Board any aid in my power in attaining the important object which you have in view with respect to the appeals from India, and that I shall be ready to meet Sir Edward Hyde East and Sir James Mackintosh at any time you may appoint.

My attention has been long directed to the proceedings of the Sudder Adawlut Courts of Bombay, Madras and Calcutta, and to those of His Majesty's Privy Council in this country as a court of appeal from those courts.

In consequence of a request made to me by the late Marquess of Londonderry, while I was Chief Justice and President of his Majesty's Council in Ceylon, I gave the subject in all its bearings the most deliberate consideration: I made two journies by land from Cape Comoreen to Madras and back again, for the purpose of becoming thoroughly acquainted by local observation with the proceedings in the Zilla, Provincial, and Sudder Adawlut Courts under the Presidency of Madras. I examined while in England in 1809 and 1810, with the assistance of the late Mr. Chalmers, the then clerk of the Council, all the proceedings which had taken place, and all the orders which had been made in every case of appeal from the colonies to the Privy Council, from the reign of King William down to that period.

In 1822, I gave the Marquess of Londonderry at his request a paper, of which No. 1 is a copy, containing my opinion as to the improvements which ought to be introduced into the system of administering justice in the territories under the Presidency of Madras, and also as to the measures which ought to be adopted for rendering the Privy Council an efficient court of appeal, in cases appealed from the Courts of Sudder Adawlut at Madras, Bombay, and Calcutta.

In consequence of Lord Londonderry's death, no steps were taken upon the subject at that time; and in order again to call the attention of the Board of Control, and his Majesty's Ministers to a question of so much importance, I drew up the paper, of which No. 2 is a copy, in 1826; gave copies of it to Mr. Wynn, the then President of the Board of Control, to Sir Robert Peel, the then Secretary of State for the Home Department, and to Mr. Wilmot Horton, the then Under Secretary of State for the Colonies, and suggested to Lord Lansdown the propriety of moving in the House of Lords, as he subsequently did, for a return of all the cases of appeal in arrear from India. In that paper I proposed, as you will perceive, that the Court of Directors should appoint one of their civil servants acquainted

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acquainted with the proceedings of their courts in India to arrange all the papers connected with the appeals from the Sudder Adawluts then pending before the King in Council. I shortly afterwards explained my ideas upon the subject to Mr. Richard Clark, a civil servant of the Madras establishment, with whom I had been long acquainted, and, conceiving him to be fully qualified for the purpose, advised him to offer to the Court of Directors to undertake the service to which I allude, and mentioned him to Mr. Wynn as the fittest person the court could appoint.

In consequence of my advice, a communication was opened between the Privy Council and the Court of Directors through the Board of Control upon the occasion. Mr. Clark was examined before the Privy Council. I had a great many interviews with the Company's solicitor, Mr Lawford, upon the subject, and the result of all these different steps has been to enable Mr. Clark to examine and to arrange all the papers connected with these appeals in such a manner as will render it very easy for Sir Edward H. East, Sir James Mackintosh and myself whenever we meet to propose to the Board such a plan as may enable the Privy Council to take steps for bringing those cases which have been so long in arrear to a speedy decision, and for preventing the occurrence of any unnecessary delay in future.

I have the honour to be, Sir,

Your most obedient humble Servant,

A. J.

COPY of the Joint-Opinion of the Right Honourable Sir *J. Mackintosh*, the Right Honourable Sir *E. H. East*, and Sir *Alexander Johnston*.

WE, the Right honourable Sir James Mackintosh, the Right honourable Sir Edward Hyde East, and Sir Alexander Johnston, at the request of Mr. Grant, have taken into our serious consideration the important case which relates to the almost total failure of the appellate jurisdiction of the Company's courts in India to the King in Council. This jurisdiction has now existed for more than 40 years, and during that time, in which about 50 appeals have been entered, only three have been brought before the Council in a condition which rendered it possible to give judgment upon them; and therefore no part of this failure is attributable to delays in the court of appellate jurisdiction.

We abstain from offering any opinion upon the general convenience of all appellate jurisdiction in this country over the Company's courts, not considering the extended view of the subject as intended to be submitted to our consideration.

It seems that neither the utmost diligence on the part of the Privy Council, nor the wisest constitution of that tribunal could abate the evil, so long as the Council are confined within their ordinary judicial duties. It has been suggested to us, that the principal cause of failure in the appellate jurisdiction from the Company's courts, is the ignorance of the natives in India of the measures necessary to give effect to an appeal, and that their ignorance in this respect is the more excusable, because the Company's courts of appeal in India, as we have been informed, always entertain and proceed upon an appeal from the inferior jurisdiction as soon as the record is lodged in their custody, without waiting for any further steps to be taken by either respondent or appellant.

Perhaps as the evil has arisen from a want of due provision in our laws, it would be improper to strike out appeals which have been long on the list, without giving notice to the parties that their interests may be defended at the bar of the Privy Council by those in whom they repose the greatest confidence. As it seems probable that in so long a period many of the parties must have died, it would have become necessary in the case of all long-standing causes, to grant time to the parties in India to take care of interests which may be important to them.

Would not that be sufficiently provided for by directing that notices of all causes now in appeal should be sent to the several Sudder Dewanny Adawluts, with due warning, that unless

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unless they were prosecuted to the stage of judgment within two years, they should be deemed and taken to be dropped appeals, and struck out of the list accordingly?

The care of widely dispersing these notices, so as to reach every part of the country, could only be entrusted with perfect propriety to the several Sudder Dewanny courts out of which the records come. But it is impossible to doubt that appeals are in all countries frequently brought for the mere purpose of delaying the payment of just debts, and this grievance, as far as it exists, would be particularly vexatious in India, where the distance of place necessarily consumes so much time before the cause can be brought to a hearing at home. It should seem, therefore, that it would be essential to fix a time when all future appeals should, upon non-prosecution of six months after they are lodged in the Privy Council Office, without special cause assigned, be deemed to be dropped.

It would also be a measure of much remedial justice if the Privy Council were to be invested with a power of granting double or treble costs, in cases where the appeal may be manifestly intended for delay, and necessarily attended with great vexation to the opposite parties.

There are other matters of secondary importance which admit of easier remedy. At present, in Bengal, no appeal can be brought where the amount in dispute is not 5,000*l.* or upwards. There is no limitation at the other Presidencies. According to the views which we have taken of the undue advantage given to the rich by such distant and costly appeals, it seems to us that the judgment of all the Company's courts in India should be raised to the same appealable amount with those of Bengal. Most of these regulations might probably be carried into execution by Orders in Council; but with respect to the power of costs, and the amount of the appealable sum, they might probably be thought to require Parliamentary measures, which in that case would only be settled in conferences between the President and the members of the Cabinet.

If any Parliamentary measure be adopted, a power might well be given to the courts in India to receive and record any compromise of a suit between the parties, notwithstanding the pendency of an appeal, and to transmit a judicial certificate thereof to the appellant court.

It would be a very wholesome provision if the Privy Council were to direct the Company's courts in India to strip the records of needless verbosity, and to reduce them as far as possible to what lawyers in England would call issueable points. It is not intended to say that the huge masses of papers such as are now sent should not continue to be sent, in order that they might be examined, in case of necessity, with a searching eye by all those who took a special interest in a cause, and in order also that the fidelity of the abridgement might in all cases be easily ascertained. It must be owned, however, that as things now are, their immense magnitude, besides greatly enhancing the expense, much more tends to impede due examination of them than to promote it.

It is clear that appeals should not be made against judgments, orders, or decrees of an interlocutory nature, unless the applicant shall enter upon the record a suggestion that such judgment, &c. concludes the general justice of the case, and that he waives making any further appeal in the cause, if that judgment, &c. be confirmed against him.

(signed) *J. Mackintosh,*
E. H. East,
Alex^r Johnston.

COPY of a LETTER from Sir *Alexander Johnston* to the Right Honourable *Charles Grant.*

Sir, 19, Great Cumberland-place, 7th May 1832.

Sir Edward H. East, Sir James Mackintosh and I, had the honour on the 4th instant to send you, in answer to your letter of the 29th of March, our joint opinion upon some of the points which you had referred to us, relative to the appeals which are brought from the courts of Sudder Adawlut in India to the Privy Council in this country.

I have

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I have now the honour, in consequence of the conversation which I had with you this forenoon, to enclose you a statement of the different measures which Mr. Clark and I think necessary to enable the Privy Council to hear and decide the fifty cases of East-India appeals which have been so long pending before the King in Council, but which, owing to the zeal and promptitude with which you have taken up the question, may now be expected to be brought to a conclusion without any more delay.

Allow me to add, in allusion to the very flattering terms in which you have done me the honour to ask my opinion upon the occasion, that receiving as I do the pension of a retired Indian judge, I shall always feel it to be a public duty which I owe to my country to co-operate in any way in which my services may be required in hearing and determining all the Indian cases which are now in arrear.

I should not presume to think that my services could be of any use in such a proceeding unless my attention had been particularly called to the subject from the year 1819 to the present period, in consequence of a reference which was then made to me by the late Lord Londonderry, and in consequence of my having been, during the whole twelve years I was Chief Justice and President of His Majesty's Council on Ceylon, *ex officio* First Member of the High Court of Appeal on that island, which court has the same appellate jurisdiction over all the inferior courts on the island as the several courts of Sudder Adawlut at the different Presidencies on the continent of India have over all the inferior courts in their respective Presidencies, and which court proceeds according to the same rules, regulates its decisions according to the same codes of Mahomedan and Hindoo law, and administers justice amongst natives of the same religious persuasion as the Courts of Sudder Adawlut do within those Presidencies.

I have the honour to be, Sir,
Your most obedient and faithful servant,
Alex^r Johnston.

IT appears that under the operation of certain Regulations of the Indian governments, a great number of appeals from decisions of the Courts of Sudder Adawlut (or courts of the highest jurisdiction, established by the East-India Company, for the administration of justice to the natives of India residing in the provinces, and not amenable to the jurisdiction of the King's Supreme Courts of Judicature) have from time to time been transmitted to England, the earliest of which bears date in 1799; and that, with very few exceptions, they have not been prosecuted by the appellants in the usual mode in which appeals are prosecuted before the King in Council, neither have the respondents taken any steps to have them dismissed for non-prosecution; and it further appears, that in some cases the parties have compromised their suits subsequently to the arrival of their appeals in England, and have transmitted duly attested notice of such compromises in the same way in which the appeals were transmitted; and that as no orders have been issued by the Privy Council upon such references, the parties who have so compromised, and their sureties, are not released from their responsibility, nor are all their deposits and securities returned to them; because, as stated in the proceedings of the courts abroad, the appeals are considered as being lodged and depending before His Majesty in Council, without whose final orders such relief cannot be afforded to the suitors.

Bengal, XVI. of 1797. Madras, VIII. of 1818. Bombay, IV. of 1827, ch 23.

It appears that the right of appeal from the Sudder Dewanny Adawlut at Calcutta was limited by the 21 Geo. III. c. 70, s. 21, to cases in which the sum in issue is not less than 5,000 *l.*; and that in pursuance of such limitation a Regulation was enacted by the Bengal government in the year 1797, prescribing the rules under which applications should be made by suitors for leave to appeal to the King in Council, and all other measures should be taken for the furtherance of the appeals, and of all documents necessary for the information of the King in Council; such Regulation, however, distinctly declaring the reservation to His Majesty of his right to exercise his full and unqualified pleasure in the rejection.

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rejection or admission of appeals, notwithstanding any rules in the said Regulation. But the Act above referred to not having prescribed any limit to the right of appeal from the decisions of the highest Company's courts at Madras and Bombay, a different course was adopted at those Presidencies. By Regulation V. of 1802, enacted by the Government of the former Presidency, provision was made for an appeal from the judgments of the Sudder Adawlut at Madras to the *Governor General* in Council at Calcutta; and it is understood, that for several years subsequently to the date of that Regulation appeals were preferred accordingly, and that the Governor General in Council, on the receipt of the records of appeal (which were prepared and transmitted to him in like manner, and under similar rules to those which now govern the transmission of appeals to His Majesty in Council from that Presidency) used to issue his final orders or decrees on such appeals, and forward the same to Madras, to be there carried into execution. The Governor General in Council, however, having subsequently "relinquished the authority exercised by him" with regard to such appeals, the previous Regulation was repealed, and a new Regulation was enacted, which is now in force, and under which the appeals from that Presidency, now in England and unproceeded in, have been transmitted. At Bombay a Regulation was passed in 1812, containing the like provisions as that passed in Bengal for the admission of appeals, in such cases only as amounted to 5,000 *l.*, although no limitation of the right of appeal from Bombay had been imposed by Act of Parliament. This Regulation, however, was was very soon rescinded by Regulation XI. of 1813, and no rules appear to have existed for the admission, at that Presidency, of appeals to the King in Council until the passing of Regulation V. of 1818, which is similar in its provisions to the Madras Regulation VIII. of the same year, providing for all Acts necessary to be done *in India* for the presentation and admission of an appeal, and for the transmission of an authentic record of all proceedings, evidence, &c. for the information of the Privy Council; and likewise for the delivery of security, as well for the fulfilment of the eventual decree of His Majesty in Council, as for the payment of all costs that might be incurred in the prosecution of such appeals. When the Regulations of the Bombay Government were re-enacted in an improved form in 1827, rules similar in effect to those of 1812 were enacted in Regulation IV. c. 23; and it was there declared, that "the decrees of the King in Council, when duly certified, should be enforced, under the directions of the Sudder Dewanny Adawlut, by the judge of the zillah in which the suit was originally tried in the same manner as those of his own court." In all the Regulations above noticed the directions to the suitors are necessarily confined to such acts as were under the control of the Indian courts, and could not extend to measures which should be adopted in England, nor fix any limit of time for finally disposing of the suits in the event of the parties not moving in them by the agency of representatives in England.

Madras, Reg. V. of 1802, s. 33, *et seq.*
Reg. VIII. of 1818.

Madras, Reg. VIII. 1818.
Bombay Reg. IV. 1812.

It appears that to each of the records of appeal which have been received in England from the Sudder Adawluts in India is prefixed a certificate under the seal of the court, and the signature of the registrar, declaring it to contain authentic and correct copies of the orders, judgments, evidence and other documents in the case, prepared for submission to the King in Council; and it further appears that the said records have all been forwarded by the local governments to the Court of Directors of the East-India Company, by whom they have been lodged or deposited in the office of the Privy Council, and that those records are intended for the sole use of the Privy Council, and not for the use of the suitors or their agents; and it further appears, from correspondence between the Court of Directors of the East-India Company and their governments abroad and from proceedings of the Courts of Sudder Dewanny Adawlut, accompanying the references in compromised suits, that the reception of those records in England is deemed by the authorities abroad to be virtually a lodging of the said appeal before His Majesty in Council, whose orders thereon are looked for; and that without such orders Courts abroad do not consider themselves authorized to dispose, finally, of any case that has been so appealed, and to restore deposits, and deliver up securities; adverting to what is understood

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understood to have been the practice in cases of appeal from the Sudder Adawlut at Madras to the Governor General in Council previously to 1818, such expectation seems grounded on the former practice in India in that respect.

Referring to the peculiar condition of the natives of India, for whom a system of administration of justice has been provided, under legislative sanction, by the East India Company, and to the incompetency of the courts or governments abroad to promulgate any rules regarding the course of proceeding in England, or to authorize the dismissal of suits for non-prosecution or otherwise, unless such rules shall have first received the sanction of the Privy Council; and it being necessary that such rules should be made and duly notified by regulations to be promulgated at the Presidencies in India, and that provision should be made for giving due effect in England to such rules, so that the present accumulation of arrears may be finally disposed of, with due regard to the interests and rights of the suitors, the following provisional measures are proposed:

All the appeals and proceedings received from the Courts of Sudder Adawlut, through the Court of Directors of the East-India Company, shall be referred to a Committee of His Majesty's most honourable Privy Council, who shall meet as often as may be required, and who shall prepare such orders, judgments or decrees as the exigency of each case may require, to be submitted to His Majesty in Council for his confirmation and approval; notice of such reference shall be communicated to the Courts of Sudder Adawlut in India for the information of the suitors.

All appeals transmitted to England by the Courts of Sudder Dewanny Adawlut at the several Presidencies under the Regulations of the Indian governments, and received in this country before the 31st December 1831, and which shall not be proceeded in by the appellants before the 31st December 1833, shall be dismissed.

An officer to be called Registrar of Adawlut Appeals shall be attached to the Committee until the present accumulation of appeals shall have been disposed of, or until some permanent arrangement regarding appeals from the Courts of Sudder Dewanny Adawlut to His Majesty in Council shall be made,

The duties of that officer shall be as follows:—To have the care of the records and other documents transmitted from the Sudder Adawluts in India for the purpose of being laid before His Majesty in Council, and to keep a register of them according to their dates; to make such communications to the Sudder Adawlut Courts as the Committee of the Privy Council shall direct.

To prepare from each "record" a list of all the papers forming the collection so termed, exhibiting briefly the subject of each paper, number or document, for the better enabling the Committee to refer to the record; and also to prepare a glossary of all Indian terms used in each case.

To carry into effect the rules which may be passed for the direction of the parties, and the due order of proceeding in regard to the Adawlut appeal; to provide professional assistance for the parties when authorized so to do by a power from the suitors in India, and to keep a regular account of all monies expended on their behalf out of the deposits to be made by them in India, and to transmit copies of such accounts for audit to the proper officer of the East-India House before transmission to India.

The appellants in India shall be required by a Regulation, to be promulgated at each Presidency, to notify, within a term to be specified, whether it is their intention to proceed with their suits; and if such be their intention, they shall be required to state to the court of the zillah within which they reside, within a certain time, the name and address of the person who will be authorized to be their agent in England for conducting the said suit. The appellants shall be at the same time informed that they may, if they desire it, appoint the registrar of Adawlut appeals to be such agent, so far as to appoint counsel in their behalf, and to pay all expenses attendant on the prosecution of the appeal, provided they severally deposit in the treasury of the Presidency to which they belong a sum not less than 1,000*l.*,

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1,000*l.*, to be drawn out as required for the payment of the appeal, on vouchers to be delivered to the auditor of accounts at the East India House. All suits in which the appellants shall not either appoint an agent of their own, or authorize the registrar of Adawlut appeals to act for them as above, in three months from the date of the notice served upon them, shall, on certificate from the Sudder Adawlut of due service of such notice and of failure to obey the same, be dismissed.

Like notice shall be given to the respondents, with like option of empowering the registrar of Adawlut appeals to appoint counsel on their behalf; and on certificate from the Sudder Adawlut of due service of such notice, and of no agent having been appointed, the appeal shall be heard *ex parte*, on application to that effect by the representative of the appellant.

In all applications for leave to appeal which may be presented after the receipt of these orders by the Sudder Adawlut Courts in India, the appellants shall be required, besides the previous conditions which they are now called upon to fulfil, and deposits now required, to state the name and address of the person who is to act as agent for the appeal in England or to authorize the registrar of Adawlut appeals to appoint counsel for them on their making the deposit for the expenses to be incurred; and no appeal shall be admitted by a Court of Sudder Adawlut unless such nomination of a representative be made by the appellant.

The substance of the foregoing rules shall be duly promulgated in the several Presidencies in India by Regulations drawn out in the prescribed form, and declaring in the preamble that the said rules have the sanction of His Majesty's most honourable Privy Council.

(G).

The Copy of a LETTER from the Abbé *Dubois* to Sir *Alexander Johnston*, giving him an an Account of the present condition of the Native Catholics throughout India.

King-street, Portman Square,
London, 21st May 1831.

Dear Honourable Sir,

IN the last interview I had the honour to have with you, you appeared anxious to have a short sketch of the Christian missions in Asia. I will endeavour to comply with your wishes, as far as my inquiries on the subject, during my long residence in India, enable me to do.

The whole of the Christian converts in Asia, during the three last centuries, by the Jesuits and their successors, do not amount, at the present time, to more than twelve or thirteen hundred thousand, if we except those made by the Spanish missionaries, on the Phillippine Islands, which, from all accounts, amounts to about two millions, among the natives of those Islands. Of the twelve or thirteen hundred thousand converts on the Continent of Asia, India contains one half that number, under the superintendence of four titular bishops, and three bishops *in partibus*, with the titles of Apostolical Vicars. The four titular bishops are, the Archbishop of Goa, (the metropolitan of India,) and the Bishops of Cranganore, Cochin, and Malayapore, (St. Thomé, near Madras). The three apostolical vicars, who reside, one at Bombay, another at Verapoly, on the Malabar coast, and the third at Pondicherry, are immediately appointed by the Pope, without the interference of any temporal power. The two former are Italian Carmelite Friars, the latter is a Frenchman, and has the superintendence over the French mission in the Carnatic and Mysore.

Each bishop and apostolic vicar has a district assigned to him by the Holy See. The Archbishop of Goa has under his spiritual jurisdiction the most numerous congregations. It is he who directs all the Catholics in the Island of Ceylon, whose aggregate number amounts to at least 120,000. He has also under his spiritual sway, the great number

number of congregations disseminated on the Malabar coast, from Tellicherry and Mangalore to Goa, inclusively, and containing at least 150,000 Catholic Christians. Next to Goa, the most numerous mission is that of the Apostolical Vicar at Verapoly, near Cochin, who reckons 130,000 converts, partly of the Syriac, partly of the Latin rite; the former are converts made by the ancient Jesuits, of the Syrians of the Nestorian sect, established from immemorial time in Travancore, and having still many congregations of that persuasion who steadfastly adhere to the doctrines of Nestorius; whose principal error consisted in admitting two persons in Christ. They, however, admit the seven sacraments, as the Roman-catholics, purgatory, invocation of saints, &c. but altogether reject the worship of images*. Those who are become converts to Catholicism have preserved the ancient *Syriac*, or *Chaldeo-Syriac*; and their liturgy is in that language, which their priests learn merely to read in order to be able to perform their religious ceremony, without understanding it, having no professors to teach them, and in general their native priests are very ignorant. The Bishop of Cochin has about 45,000 Christian natives under his spiritual sway; his jurisdiction extends from Cochin and Tuticorin, along the coast to Negapatam. His congregations along that tract of country are numerous, and are chiefly composed of fishermen, known under the name of Paravas, who boast and pride themselves on being the offspring of the converts made three centuries ago by the celebrated Jesuit St. Francis Xavier. The Bishop of Cranganore exercises his spiritual power in a part of the Travancore country, and in the province of Marava and Madura; he reckons 36,000 converts of several castes. Among his flock there are many thousands of those professional robbers called Colliers, who chiefly inhabit the Marava district. The Apostolical Vicar of Bombay, an Italian Carmelite friar, has the poorest mission in India; his flock does not amount to above 10,000 or 12,000 converts. The French mission entertained by the *Seminaire des Missions Etrangères*, in Paris, is composed of a French Apostolical Vicar, appointed by the Pope; his residence is at Pondicherry, and he is assisted by two French missionaries, scattered over the Carnatic and Mysore countries. The number of Christians under their charge amounts to at least 40,000. The Portuguese Bishop of St. Thomé's, near Madras, exercises his jurisdiction in the Tanjore country, where there are about 12,000 native converts; and all along the coast from Negapatam to Calcutta, there are found several congregations, chiefly consisting of that class of people calling themselves the offspring of the ancient Portuguese. Such is, Sir, the short analysis of the state of the Catholics in India I can give you; and such are the remainders of those once flourishing congregations, founded by the Jesuits, amounting, 80 years ago, to 2,000,000. Since that period, and chiefly since the extinction of the order of the Jesuits, the affairs of Christianity on the Peninsula, owing to many causes, which it would be too long to enumerate, have been visibly on the decline, and, in my opinion, will continue to be so.

I will now say a few words about the Christian sects from the Catholic Church, which have also formed religious establishments on the Peninsula. The most ancient are the Nestorians, established in Travancore, styling themselves the Christians of St. Thomé's; a claim without foundation, it being well known that their patriarch and founder, *Nestorius*, Bishop of Constantinople, lived in the fifth century: most of them were, as already mentioned, converted to the Catholic faith by the ancient Jesuits, but a great many remained, and still remain, steadfastly attached to Nestorianism, and form several congregations, amounting in all to about 20,000.

There are also congregations of Protestants, of several sects; the most flourishing are those of the Calvinistic persuasion, established in the Island of Ceylon, amounting, it is said, to about 60,000, chiefly composed of Catholic converts, who turned Calvinists during the long persecution exercised by the Dutch against Catholicism; a persecution which lasted

* By worship of images is meant nothing more than respect and veneration for the holy persons represented by them.

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lasted, in a great degree, until the time when, by your benevolent and persevering interference, you succeeded to obtain the full emancipation of the Catholics, and to remove all the civil incapacities which weighed on them on account of their religion; a favour, whose remembrance shall be handed down from generation to generation, among the Catholic population of the island, with senses of the liveliest gratitude. From the Peninsula of India let us pass over to the countries beyond the Ganges.

There is a mission of Italian Barnabite Friars, established more than a century ago in Pegu, having to attend to the five congregations at Rangoon, and some other parts of the country, an apostolical vicar, and three or four missionaries. That mission, owing to the civil wars which at all times raged in the country, and to other causes, was at no time prosperous, and at present reckoned only about 8,000 converts.

The *Seminaire des Missions Etrangères*, in Paris, has entertained, during these last 150 years, a mission in the kingdom of Siam, which at present consists of a bishop, apostolical vicar, and six French missionaries; the residence of the bishop is at Bankock, and the missionaries attend the congregations scattered over the country. The number of converts was once considerable; but, owing to the continual foreign and civil wars which have not ceased to exist in the country, their number is at present reduced to about 10,000 or 12,000. The most flourishing mission under the charge of the *Seminaire des Missions Etrangères* is that of Tonkin, where we reckon at least 160,000 converts, attended by a bishop, and an apostolical vicar, 10 French missionaries, and 60 native priests, properly educated by two French missionaries, delegated for that purpose. The Spanish mission, in the same country, is no less flourishing than the French one; thus the aggregate number of Tonkinese converts amounts to about 300,000 souls. Next comes the mission of Cochin-China and Cambodia, including at least from 70,000 to 80,000 converts, attended by a bishop, vicar apostolic, nine or ten French missionaries, and about 25 native priests, educated by the missionaries.

Finally, the *Seminaire des Missions Etrangères* entertains a mission in the interior of China. In the province of Futchneu, there are to be found about 50,000 Chinese converts, attended by a French bishop, six or seven missionaries, and 22 or 24 Chinese priests. The Portuguese, Spaniards, and Italians, have also established missionaries in several provinces of the Empire, many of which go on well, and the aggregate amount of the Chinese converts does not fall short of 200,000. However, as the Christian religion is proscribed by the laws of the empire, and the ingress of foreigners into the interior forbidden under pain of death, the missionaries are introduced by trusty converts with the greatest caution, at the risk of their lives for the introducer and the introduced; and even after their safe arrival in their missions they are obliged to live hidden, and to use a continual vigilance not to be discovered. If they are discovered, and given up to the Mandarins, they are judged and sentenced to death, or to perpetual exile in Tartary, ordinarily to Eli. They are, however, sometimes redeemed by giving heavy bribes to the Mandarins.

The *Seminaire des Missions Etrangères* sends every year a certain number of young missionaries to Macao, where we have an agent, a French missionary, well acquainted with the localities; whose charge is to receive the missionaries we send, keep the correspondence between our Missions and the Seminaire of Paris, receive and shelter the couriers which are sent once a year by the apostolic vicar, to accompany and introduce the missionaries newly arrived from Europe, send to the several missions the small sums of money, and other articles destined for each one, &c. &c.

The *Seminaire des Missions Etrangères*, founded two centuries ago, is directed by four members, who have passed at least two years in one of our foreign missions. I am one of the four. I have been deputed by my associates to this country, to keep the correspondence of the missions, receive the letters which arrive at this season by the return of the East-India Company's ships from Canton, return answers, and execute the commissions of the missionaries; the agitated state of France not allowing us a safe medium of correspondence at the present time.

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Such is, honourable sir, the short analysis I can give you of our mission, a more extensive account would prove tedious. I regret much that my leisure does not allow me to make a more neat, and a little better worded copy: this, as you will perceive, has been made with much haste, for which I beg to be excused.

I have the honour to be, dear honourable Sir, your very obedient Servant,

The Abbé *J. A. Dubois.*

(H.)

THE Copy of a Plan for framing a Maritime Code for the use of all the different Natives of Asia who navigate the Indian Seas, and who trade with the several British Possessions in India.

AS the East-India Company's charter will soon expire, and as the Legislature of Great Britain will then be called upon to decide whether a royal government shall be established over the British territories in India, it is advisable that His Majesty's Government should take into their serious consideration every subject which is connected with the maritime and commercial prosperity of that immense empire.

There is no subject which is of more importance, both in time of peace and in time of war, to the maritime and commercial prosperity of Great Britain and India, than that which relates to the situation, the regulations, and the proceedings of the several Vice-Admiralty jurisdictions which have from time to time been established, as well in the East India Company's settlements at Bombay, Madras, Calcutta, and Penang, as in the King's settlements at the Cape, the Isle of France, Ceylon and New South Wales.

Of these eight Vice-Admiralty jurisdictions, the four first were, in consequence of their being situated in the East-India Company's settlements, established by several Acts of the Parliament of Great Britain; and the four last were, in consequence of their being situated in King's settlements, established by several orders of the King in Council.

Although there is a difference between the four first and the four last jurisdictions, as to the authority by which they were originally established, there is no difference whatever between them either as to the appointment of their judges, the nature of their jurisdiction, the forms and rules of their proceedings, the laws and usages according to which they decide, or the court in England before which their decisions are liable to be revised.

All the judges of these jurisdictions are appointed by the Lord High Admiral of England, and they all hold a commission under the great seal of the High Court of Admiralty, by which they are directed to exercise within their local limits a similar jurisdiction to the one which is exercised by that court, to proceed according to the same rules and forms as that court, to decide according to the laws and usages observed by that court, and in every case to allow of an appeal against their decisions to that court.

It is obviously the intention of the King and Parliament of Great Britain that these jurisdictions should, in consequence of their being so intimately connected as they are, both in time of peace and in time of war, with the maritime interests and naval superiority of Great Britain, be under the immediate control of the High Court of Admiralty and the general superintendence of the Lord High Admiral of England; and that all of them, as well those which are situated in the Company's as those which are situated in the King's settlements, should be considered as parts of the same system which Great Britain, in consequence of the extent of her territories to the east of the Cape of Good Hope, and the acknowledged superiority of her navy in the Indian seas, has felt it her duty to establish at her own expense, for the purpose in all maritime questions of administering prompt and substantial justice towards all the maritime traders and navigators of those seas, Europeans as well as natives of Asia; towards the former, according to such maritime laws and usages as

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as prevail respectively amongst all the different Europeans who frequent those seas; towards the latter, according to such maritime laws and usages as prevail respectively amongst all the different maritime people of Asia, consisting of Arabs, Persians, Maldivians, Malays, Hindoos and Chinese, who from time immemorial have had separate maritime laws and usages of their own, and who are most materially interested, as shipowners, maritime traders, and mariners in the navigation and trade of the Indian Ocean, and of all the adjacent seas which extend from the Cape of Good Hope west, to the Philippine Islands east, and from Van Diemen's Land south, to Calcutta north.

It is now, however, ascertained by experience that these Vice Admiralty jurisdictions, from want of sufficient local information at the time they were first established, are framed too exclusively upon the model of the High Court of Admiralty in England, and therefore that they are not so well adapted as the other King's courts in India to the local situation of the different territories, and the local circumstances of the different people for whose benefit and protection they are established.

All the nations of Asia have a right to hope that Great Britain will, in consequence of the high character for justice and the naval superiority which she has acquired throughout the Indian seas, now do, with respect to all her maritime courts in Asia, what she has already done with respect to all her other courts in that part of the world.—modify them in such a manner as to render their proceedings applicable to the local circumstances of the different countries in which they are established, and to the peculiar character, manners, and feelings of the different people whose persons, property, rights, and interests it is her object to protect; that she will, by collecting, printing, and publishing authentic collections of all the maritime laws and usages of the different people of Asia, enable as well the judges of her maritime courts as all other persons interested in the question, to become thoroughly acquainted with all those laws and usages; and finally, that she will not only make but enforce, both in time of peace and in time of war, as well by her maritime courts as by her naval power, such regulations for the navigation and trade of those seas as are consistent with the general principles of justice, and in harmony with the different maritime laws and usages which have from time immemorial been observed by the several maritime nations of Asia.

The extent and the accuracy of the local information which has been acquired since the original establishment of these jurisdictions, will now enable the Lord High Admiral of England, should his Royal Highness think it expedient to take the subject into his consideration, to remedy without difficulty the defects which experience may have shown to be inherent in their present constitution, and to frame, from the most authentic materials, such a comprehensive and popular system for administering justice in maritime cases throughout the Indian seas, and such a comprehensive and popular code of maritime laws and usages for the security and protection of all the maritime traders, shipowners and mariners of Asia, as will not only in the present but also in future ages associate inseparably, in the minds of all the people of Asia, the idea of the justice with that of the maritime power of Great Britain. It is with this view submitted to the Lord High Admiral, that it will be advisable for his Royal Highness to order the Vice-Admiralty jurisdictions of the Cape, the Isle of France, Ceylon, New South Wales, Bombay, Madras, Calcutta, and Penang, to send to the Admiralty a report upon the three following points:

1st. Upon the origin, proceedings, and present state of each of the Vice-Admiralty jurisdictions which have been respectively established at Bombay, Madras, Calcutta, Bengal, the Cape, Isle of France, Ceylon, and New South Wales, and upon the nature of the different powers, civil and criminal, which are exercised by their different judges, as well in time of peace as in time of war.

2d. Upon all such general maritime laws and usages of Europe, and such particular statutes of the Parliament of Great Britain as are at present applicable to the trade and navigation in the Indian seas, both in time of peace and in time of war.

3d. Upon

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3d. Upon the several codes of maritime laws and usages which are respectively in force amongst all the different nations of Asia, who are in any way engaged in the maritime trade, or in the navigation of the Indian seas.

With reference to the first point, it is submitted that the report should, besides affording a minute detail of the rules of proceeding, of the tables of fees, and of the numbers, duties and emoluments of the officers of each court, also contain a distinct and clear view of the extent and nature of the sea coasts, of the castes and character of the mariners, of the several branches of maritime trade and of the different sorts of shipping within the local limits of each court, a description of the cases which are the most commonly brought before it, of the number and peculiarities of the cases which have been decided by it ever since its first establishment, of the number of those which have been appealed, of the amount of the expense which the several parties have incurred in consequence of each appeal, and of the time which had elapsed between the original decision given by the Vice-Admiralty Court and the final one given by the Court of Appeal.

With reference to the second point it is submitted, that the report should specify in what manner each of the maritime laws and usages of Europe, and each of the statutes of the Parliament of Great Britain which is at present considered as in force with respect to such maritime traders and navigators in the Indian seas as are natives of Asia, may have an effect upon or be in opposition to their religious and moral habits, their feelings and their prejudices, and in what manner such maritime law and usage, or such statute, may be so modified as to attain the political or commercial object for which it was made, without militating against any of those feelings or prejudices.

With reference to the third point it is submitted, that the report should contain authentic and perfect collections in the original languages of the country, and in English, of the several maritime laws and usages which prevail amongst the different nations of Asia who are engaged in the trade and navigation of the Indian seas. Sir Alexander Johnston knows, from his own experience, that such collections may be easily made, and that all the information which is required may be obtained through the different Vice-Admiralty establishments at the Cape, Isle of France, New South Wales, Calcutta, Madras, Bombay, and Prince of Wales's Island. In the course of the 16 years during which he held, under the Great Seal of England, and under that of the High Court of Admiralty, the offices of President of his Majesty's Council, Chief Justice of the Supreme Court, and Judge of the Vice-Admiralty Court in Ceylon, he felt it to be his duty repeatedly to assemble on that island some of the best informed of the natives of those parts of Asia, the inhabitants of which were the most engaged in the maritime trade and navigation of the Indian seas, and to inquire from them, not only the nature and history of all the different maritime laws and usages which were observed amongst the maritime traders and navigators of their respective countries, but also what moral, political, and commercial effects each of those laws and usages had produced in their several countries, both with respect to the different persons who were subject to them and the different branches of trade to which their provisions refer.

By these means Sir A. Johnston ascertained that the different maritime laws and usages which prevail amongst the different nations of Asia, are partly of Hindoo, partly of Malay, partly of Maldivian, partly of Persian, partly of Arabian, partly of Cingalese, and partly of Chinese origin; that a few of them are derived from the laws of Rhodes, Oleron, Itisbury, and Consolato-del-Mare; some of which were introduced by the Arabs, from the Mediterranean, into the Indian seas, during the 15th and 16th centuries; and finally, that they all are at present, in consequence of no authentic and perfect copies of them ever having been printed and circulated throughout Asia, so little understood, even by those who are the most interested in their observance, as to render it both easy and common for the native arbitrators, to whom commercial and maritime questions are often referred, to misconstrue and pervert their meaning.

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(I.)

A PAPER containing extracts from pages 15 and 16, of the Eleventh Report of the Directors of the African Institution, and from page 93 to page 100 of the Appendix to that Report, and giving a detailed Account of the different circumstances connected with the Resolution pased on the 15th July 1816, by all (in number 763) the Proprietors of Domestic Slaves on the Island of Ceylon, declaring free all Children who might be born of their Slaves after the 12th August 1816.

IT is with feelings of the most lively satisfaction, that the Directors of the African Institution have now to state, that the benevolent exertions of Sir Alexander Johnston, the Chief Justice of the island of Ceylon, for a period of ten years, to induce the proprietors of slaves in that island to fix a day after which all the children born of their slaves should be considered as free, have at length been crowned with success. Early in the month of July last, that liberal and enlightened judge addressed himself upon this subject to the principal proprietors of slaves at Colombo who were upon the list of special jurymen for that province. The proposal contained in the Chief Justice's letter was well received by these gentlemen; and at a general meeting which they called, to take it into consideration, they unanimously resolved, that all children born of their slaves after the 12th of August last should be free. That day was fixed upon by them, at the suggestion of Sir Alexander Johnston, in honour of the Prince Regent. They afterwards appointed a committee from among themselves to frame certain resolutions for the purpose of carrying their benevolent intention into effect; the principal object of which was to secure a provision for the children born free after the 12th of August 1816, from the masters of their parents, until the age of fourteen, it being supposed that after they shall have attained that age they will be able to provide for themselves.

Sir Alexander Johnston states, that the special jurymen of Colombo consist of about 130 of the most respectable Dutch gentlemen of the place, in which number are contained almost all the Dutch who are large proprietors of slaves. Besides these gentlemen, there are jurymen of all the different castes among the natives. The moment the jurymen of these castes heard of the resolution adopted by the Dutch special jurymen, they were so much struck by the example, that they also addressed the Chief Justice, announcing their unanimous acquiescence in the measure which had been resolved upon by the Dutch special jurymen. And Sir Alexander Johnston adds, that the example of the jurymen at Colombo, was, he understood, to be immediately followed by all the jurymen on the island. "The state of domestic slavery," he says, "which was practised in this island for three centuries may now be considered at an end." And he observes, that the measure which has thus been brought about, is in a great degree owing to the principles diffused by the circulation of the Reports of the African Institution.

The Directors are persuaded that they express the cordial feeling of the institution at large in offering the tribute of their grateful acknowledgement to Sir Alexander Johnston for his successful exertions in promoting, and to the special and other jurymen of the island for their general adoption of this important change in the condition of their country, and for the bright example which they have taken the lead in exhibiting to the world, of fixing a period for the extinction of the state of domestic slavery, an example which the Directors trust will speedily be followed wherever it may be done with safety. But whether this hope shall be realized or not, it will never be forgotten that the inhabitants of Colombo were the first of the British colonists to act upon this grand, noble, liberal and disinterested principle; and they will for ever deserve the best thanks of every individual who has at heart the advancement of the happiness of mankind, and the improvement of human nature.

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Extract of a LETTER from the Honourable *Sir Alexander Johnston*, dated Colombo, 22d July 1816.

Sir Alex. Johnston.

I HAVE, for the last ten years of my residence in Ceylon, been endeavouring, as I believe I have often mentioned to you, to get the principal proprietors of slaves on the island to fix a day after which all children born of their slaves shall be considered as free. My endeavours have at last, as you will see by the enclosed papers, been attended with success. I wrote on the 10th of this month a letter (of which No. 1 is a copy) upon the subject to the principal proprietors of slaves in this place, who are upon the list of the special jurymen for the province of Colombo, and who are therefore all personally known to me. By the letter, (of which No. 2 is a copy,) you will see that the proposal contained in my letter was well received by them; and that they, at a general meeting which they called to take the contents of that letter into consideration, unanimously came to the resolution, that all children born of their slaves after the 12th of August next should be free; (the 12th of August was fixed upon by them, at my suggestion, as a compliment to the Prince Regent). They afterwards appointed a committee from among themselves to frame certain resolutions (No. 3), for the purpose of carrying their benevolent intention into effect. The principal object of these resolutions is, as you will perceive, to secure that the children born free after the 12th of August next shall be provided for by the masters of their parents until the age of fourteen, it being supposed that after they have attained that age they will be able to provide for themselves.

The Dutch special jurymen of this place consist of about 130 of the most respectable Dutch gentlemen of the place; in which number are contained almost all the Dutch who are large proprietors of slaves. Besides these gentlemen, there are jurymen of all the different castes among the natives, such as vellales, fishermen, men of the mahabadde or cinnamon department, Chittees, and Mahomedans. The moment the jurymen of these castes heard of the resolution which had been come to by the Dutch special jurymen, they were so much struck with the example which they had set them, that they also immediately addressed me in the same manner as the Dutch had done; announcing their unanimous acquiescence in the measure which had been adopted by the Dutch, and their unanimous determination to consider as free all children that may be born of their slaves after the 12th of August.

No. 4. is a copy of the answer which I sent to the address which was presented to me on the occasion by the Dutch special jurymen; and No. 5. a copy of that which I returned to the respective addresses which were sent me by all the jurymen of the different castes of natives at Colombo.

The example of the jurymen at Colombo, is, I understand, to be immediately followed by all the jurymen on the island *. You will, I am sure, be delighted to hear of this event. The state of domestic slavery, which has prevailed in this island for three centuries, may now be considered at an end.

No. 1.—Copy of a LETTER from the Hon. Sir *Alexander Johnson* to the Dutch Gentlemen whose Names are on the List of Special Jurymen for the Province of Colombo.

Gentlemen, Colombo, July 10, 1816.

THE able assistance which I so frequently receive from you in the execution of my office, renders it my duty to communicate to you, without delay, any information which may be interesting to your feelings. I therefore have the honour to send for your perusal, the Eighth and Ninth Reports of the African Institution, which I have lately received from England.

The

* It was shortly after followed by all the proprietors of domestic slaves (in number 763) on the Island; all the proprietors of slaves on Ceylon were on the list of jurymen.

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Sir Alex. Johnston.

The liberality which you have always displayed in your sentiments as jurymen, make me certain that you will be highly gratified with the success which has attended the proceedings of that benevolent institution.

Many of you are aware of the measure which I proposed in 1806 to the principal proprietors of slaves on this island, and of the reason for which its adoption was at that time postponed.

Allow me to avail myself of the present opportunity to suggest to you, that, should those proprietors, in consequence of the change which has since taken place in the circumstances of this island, now think such a measure advisable, they will, by carrying it into effect, set a bright example to their countrymen, and show themselves worthy to be ranked amongst the benefactors of the human race.

I have the honour to be, gentlemen,
Your most obedient humble servant,
(signed) *Alexander Johnston.*

No. 2.—Copy of the Answer to the above.

To the Honourable Sir *Alexander Johnston*, Knight, Chief Justice of the Supreme Court of Judicature in the Island of Ceylon, &c. &c. &c.

May it please your Lordship,

WE, the undersigned, respectfully beg leave to acknowledge the receipt of your Lordship's very kind and condescending letter of the 10th instant, accompanied with the Eighth and Ninth Reports of the African Institution, the perusal of which we did not delay, in consequence of the honourable distinction which your Lordship has shown in addressing us on so important a subject, with the laudable and humane view of directing our attention to the measure which your Lordship has heretofore proposed in the year 1806.

We sincerely beg leave to assure your Lordship, that the proposal conveyed by your Lordship's letter is gratifying to our feelings; and it is our earnest desire, if possible, to disencumber ourselves of that unnatural character of being proprietors of human beings; but we feel regret in adding, that the circumstances of every individual of us do not allow a sudden and total abolition of slavery, without subjecting both the proprietors and the slaves themselves to material and serious injuries.

We take the liberty to add, that the slaves of the Dutch inhabitants are generally emancipated at the death of their owners, as will appear to your Lordship on reference to their wills deposited in the records of the Supreme Court; and we are confident that those who are still in a state of slavery have likewise the same chance of obtaining their freedom.

We have, therefore, in following the magnanimous example of those alluded to in the aforementioned reports of the African Institution, come to a resolution, as our voluntary act, to declare, that all children who may be born slaves from and after the 12th of August 1816, inclusive, shall be considered free, and under such provisions and conditions as contained in a resolution which we shall agree upon, and which we shall have the honour of submitting to your Lordship, for the extinction of a traffic avowedly repugnant to every moral and religious virtue.

We have the honour to subscribe ourselves,
May it please your Lordship,
Your Lordship's most obedient and very faithful humble servants,

Colombo, July 14, 1816. (signed) By 64 persons.

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Sir Alex. Johnston.

No. 3.--Copy of the Resolutions referred to in the preceding Letter.

At a meeting of the Members of the Special Dutch Jurors, assembled by general consent, for framing certain Resolutions, to be carried into effect for the eventual Emancipation of Children born of Slaves, held at Colombo, on Monday the 15th July 1816;

Present--Counr. Sebastian Wickerman, Esq., Johan Frederic Lorenz, Esq., John Gerard Kriekenbeek, Esq., Frans Philip Fretz, Esq., Leonard Van Dort, Esq., Christ. Cornelis Uhlenbeek, Esq., Wilh. Abraham Kriekenbeek, Esq., Dieterich Cornelis Fretz, Esq., Richard Morgan, Esq., Cornelis Arnoldus Prins, Esq., Johannes Justinus Stork, Esq, Jacobus Cornelis Vandendriessen, Esq., Johannes Bartholomeusz, Esq.

Resolved unanimously,

1st. That all children born of slaves from and after the 12th of August next ensuing shall be considered free.

2d. That if a female slave be sold who has a child or children born free, they shall go with her into the hands of the new master, if they have not completed their second year.

3d. That of all children who have past their second year, it shall be at the option of the master to return them, notwithstanding the sale of the mother.

4th. That all children who are born free shall remain in their master's house, and serve them without any wages, save and except their food and raiment, which shall be at the expenses of the masters; a male till the age of fourteen, and a female till the age of twelve.

5th. That when free-born children have completed the fourteenth and twelfth year of their age, as aforesaid, they shall from that day since be emancipated from their masters.

6th. That if a master manumits his female slave, who has a free-born child or children above two years of age, it shall be at the option of the masters to retain them, namely, the female till the age of twelve, and the male till the age of fourteen, or allow such child or children to follow the mother; in which latter case the mother shall be obliged to support the child or children.

7th. That in case any master, through manifest poverty, or from the incorrigible depravity of the free-born children, or for any other causes, finds himself unable to retain them any longer under his care, application shall be made by such masters to any charitable funds, or the magistrates, that they may be otherwise disposed of.

8th. That in order to prevent any fraud to the prejudice of the free-born children, all heads of the families in whose houses any child of that description is born shall have the birth of such child registered by the constables of his division at least within three days thereafter.

9th. That every constable shall, for the same purpose, open a register, in which shall be specified the sex, and names of the parents and masters; and a list thereof shall monthly be transmitted to the office of the sitting magistrate, to be entered in a general register of the free-born children.

10th. That in the register to be kept by the constable, an entry shall likewise be made by him of the death of every free-born child, upon the information to be given by the heads of the family within the same space of time aforesaid; and a monthly list thereof shall be transmitted to the sitting magistrate's office, to be entered accordingly in the general register.

11th. That of both the general registers of births and deaths quarterly returns shall be made to the Chief Secretary's office.

Lastly, Resolved unanimously,

That the foregoing resolutions be forwarded to the Honourable the Chief Justice, to be submitted to his Excellency the Governor, in order that the same may be made a rule, under such alterations, amendments, and modifications as his Excellency may deem expedient for the furtherance of the beneficial object in view.

(signed) By all present.

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Sir Alex. Johnston.

No. 4.—Copy of the Answer of the Hon. *Sir Alexander Johnston* to the Address presented to him by the Dutch Special Jurymen.

Gentlemen, Colombo, 21st July 1816.

I HAVE had the honour to receive the resolutions which you have sent me by Mr. Kriekenbeek and by Mr. Prins, and shall with pleasure present them, as you desire me, to his Excellency the Governor.

I beg leave to offer you my warmest congratulations on this interesting occasion. The measure which you have unanimously adopted does the highest honour to your feelings. It must inevitably produce a great and a most favourable change in the moral habits and sentiments of many different classes of society in this island; and generations yet unborn will hereafter reflect with gratitude upon the names of those persons, to whose humanity they will owe the numerous blessings which attend a state of freedom.

I return you my sincere thanks for the honour you have done me, by making me the channel through which your benevolent intention is to be communicated to his Excellency the Governor. As an Englishman, I am bound to feel proud in having my name associated with any measure which secures the sacred right of liberty to a number of my fellow-creatures.

I have the honour to be, Gentlemen,

Your most obedient and humble servant,

(signed) *Alexander Johnston.*

No. 5.—Copy of the Answer of the Hon. *Sir Alexander Johnston* to the Address presented to him by the Jurymen of the different Castes of Natives at Colombo.

Gentlemen, Colombo, 22d July 1816.

I HAVE had the honour to receive the resolutions which you have respectively passed, declaring your unanimous acquiescence in the measure which has lately been adopted by the Dutch special jurymen

I take the liberty to enclose you, as the best way of conveying to you the sentiments which I entertain upon the subject, a copy of a letter which I have written to those gentlemen.

Allow me to add, that I am fully aware of the anxiety which the jurymen of all castes have shown to emulate the example set them by the Dutch special jurymen; and that it will be gratifying to the friends of humanity to know, that whatever difference of religion, or whatever difference of caste, may prevail among the persons who are enrolled on the list of jurymen of this place, no difference of opinion has for a moment prevailed among them as to the propriety and justice of the measure in question.

I have the honour to be, Gentlemen,

Your most obedient and humble servant,

(signed) *Alexander Johnston.*

9 July 1832.

(K.)

Sir Alex. Johnston.

A PAPER containing an Account of the different circumstances connected with the Repeal, in 1810, of all the Restrictions which were previously in force on the Island of *Ceylon* against Europeans acquiring and holding Lands in Perpetuity on that Island.

AS the steps that were taken by Sir Alexander Johnston many years ago to repeal the laws which then prevailed in the island of Ceylon against the admission of Europeans to colonize on that island form a precedent for adopting a similar measure in the British territories on the continent of India, and must of course be frequently referred to by the members of both Houses of Parliament when the discussion of this important measure is brought before Parliament, we shall, for the information of those members in particular, and for the British public in general, endeavour to give a detailed account of the restrictions against European colonization which were originally introduced into the island of Ceylon on the capture of the Dutch possessions in that island by the British arms, and of the different measures which led to the complete repeal of those restrictions, and to the complete change of policy by His Majesty's Ministers upon that subject.

When the English took possession of the Dutch settlements in the island of Ceylon, they were, in the first instance, placed under the government of the East-India Company, and the same restrictions against European colonization as prevailed in the rest of the Company's dominions were in force in them; when afterwards, in 1801, the Dutch possessions on that island were transferred from the government of the East India Company to that of the Crown, His Majesty's Ministers, adopting the same policy as the East India Company had previously done with respect to European colonization in Ceylon, sent out instructions, of which the following are copies, upon the subject, to the late Lord Guildford, the then Governor of that island:

"With a view to preclude all approaches towards European colonization, you will observe, that no grants of land in perpetuity, or estates of inheritance, are to be made by Government to British subjects or European settlers, and if any such have already been conceded by Government since the island has been in the King's possessions, as such grant could only have been made subject to ratification by His Majesty, the consideration (if any) which may have been paid should be refunded, and the grant revoked.

"You will also let it be understood that the purchase of lands in perpetuity, for the obtainment of a longer term in lands in Ceylon than the period of seven years, whether in their own name or by the intervention of a native trustee, be utterly forbidden to all British subjects in the civil or military service, and to all licensed residents in Ceylon. In the event of any act being done in violation of this restriction, the attempt should be deemed a revocation of the licence possessed by the offenders.

"That Government may be apprized of the fact, you will direct that all conveyances and contracts relative to land entered into by any licensed resident, unless as tenant at will, or from year to year, be registered in the Secretary's office within three months after the contract has been entered into, on pain that the whole transaction be rendered null and void.

"As purchases of land may already have taken place between British subjects and the Dutch or natives, which, if sanctioned by Government, would form an exception to the present system, you will call on such British purchasers to dispose of such landed property, the acquisition of which was, at the least, extremely injudicious during the present war; as the value will probably have risen, and they will receive the increased amount, they will have no right to complain. Should, however, any such British purchaser refuse to acquiesce you will consider that refusal as a revocation of his licence, and direct him to depart from the island."

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Sir Alex. Johnston.

In 1806, Sir Alexander Johnston, having become Chief Justice and first member of his Majesty's Council in Ceylon, made, at the request of the then Governor, a complete circuit of the island, not only for the purpose of the administration of justice through every part of the British territories, but also for that of examining into, upon the spot, the state of the people, and the best means of ameliorating their condition, by improving the agriculture, the manufactures, and commerce of the country. Amongst other objects, he particularly directed his attention, while on the circuit, to the extent and nature of the vast tracts of waste lands belonging to the Government in the northern and eastern divisions of the island, which, although they had in ancient times been highly cultivated and well peopled, were then completely uncultivated and depopulated.

Sir Alexander being, in consequence of the report he made as to these lands, requested by Sir Thomas Maitland, the then Governor, to give his opinion as to the best mode of restoring them to their former state of cultivation, strongly advised that all the restrictions which were then in force against the colonization of Europeans in the island should be immediately repealed, and that, on the contrary, the greatest encouragement should be held out by Government to every European capitalist who would take grants of those lands from Government, and who would introduce European capital, European industry, and European arts and sciences, amongst the natives of the country.

Sir Thomas Maitland, agreeing with Sir Alexander Johnston in this opinion, recommended the adoption of the measure proposed by Sir Alexander to His Majesty's Ministers; and on Sir Alexander's proceeding to England, in 1809, for the purpose of submitting to His Majesty's Ministers, at the request of the Governor in Council in Ceylon, various measures for the improvement of the government and the situation of the island, instructed him particularly to impress on the minds of His Majesty's Ministers the policy of encouraging European colonization in Ceylon. Sir Alexander, on his arrival in England, having done so, the late Lord Londonderry, the then Secretary of State for the Colonies, sent out instructions to the Governor of Ceylon, annulling the restrictions which had previously prevailed in that island against European colonization, and authorizing him to adopt a different policy for the future, upon which the two proclamations were issued by His Majesty's Government in Ceylon, of which the following are copies:

(Government Advertisement.)

"Whereas certain restrictions have hitherto been laid on by His Majesty's commands, prohibiting Europeans from holding grounds in this island, and restricting the possession of lands to natives only, save and except in the town and fort of Colombo, and the gravetts thereunto belonging; public notice is hereby given, by command of His Excellency, that His Majesty has been graciously pleased to direct that all such restrictions be done away, and they are hereby done away accordingly, save and except in the district of Trincomalee, where the aforementioned restrictions are, for the present, still to apply.

"By his Excellency's command,
(signed) "*John Rodney*,
"Chief Secretary to Government."

"Colombo, 4th December 1810."

EXTRACT from the Ceylon Government Gazette of July 22, 1812.

(Government Advertisement.)

"*Grants of Land for Cultivation.*—The advertisement published by the Right Hon. Lieutenant-General Maitland, dated 4th December, 1810, notifying that all restrictions existing against Europeans acquiring permanent property of land in this island were from thenceforth discontinued, except in the district of Trincomalee, is now republished, viz.:

'Whereas certain restrictions have hitherto been laid on by His Majesty's commands, prohibiting

hibiting Europeans from holding grounds in this island, and restricting the possession of lands to natives only, save and except in the town and fort of Colombo, and the gravetts thereunto belonging, public notice is hereby given, by command of his Excellency, that His Majesty has been graciously pleased to direct that all such restrictions be done away, and they are hereby done away accordingly, save and except in the district of Trincomalee, where the aforementioned restrictions are for the present still to apply.' And the exception contained in the said advertisement with regard to the district of Trincomalee is hereby limited to the whole of the peninsula of Trincomalee, and three miles westward of the tank situated in the centre of the commencement of the isthmus. And for the further information and encouragement of persons desirous of obtaining grants of land from Government, for the purposes of cultivation, in any part of this island, with the temporary exception last mentioned.

"His Excellency is pleased hereby to publish the rules and conditions by which the grants will be regulated, in pursuance of instructions received from His Majesty's Ministers on this subject. Grants in perpetuity will be given to His Majesty's European subjects, and also to such Europeans, or their descendants, as were settled in Ceylon before the conquest of it by His Majesty, and who, by their good conduct since may have entitled themselves to that indulgence. The quantity of land so granted will not exceed 4,000 acres to any one individual. Such lands will be held free of all duty to Government for a period not exceeding ten, or less than five years. At the expiration of that period the lands will be subject to a fixed rent, liable to be altered at stated periods, but in no instance to exceed one-tenth of the actual annual produce. All such grants will be subject to a condition of cultivation and improvement according to the situation and capability of the land, the particulars of which stipulation, and of all other conditions, in which a latitude is left, will be fixed in the grants, upon a fair and equitable consideration of the circumstances of each case. Applications to be made by letter, addressed to the Chief Secretary of Government.

"By his Excellency's command,
(signed) "*John Rodney*,
"Chief Secretary to Government."

"Chief Secretary's Office,
Colombo, July 21, 1812."

The late Lord Londonderry, who entertained the same opinions as Sir Alexander Johnston as to the policy of encouraging European capitalists to settle in Ceylon, had determined, had he remained in office, to adopt, in pursuance of the system of policy acted upon in these proclamations, the other supplementary measures advised at the same time by Sir A. Johnston, as necessary to secure complete success to the objects which his Lordship had in view.

The supplementary measures advised by Sir A. Johnston were, 1st, to repeal such parts of the Governor's instructions as authorized him, under particular circumstances, to remove a European from the island without trial, and positively to direct that no European, American, or native of the continent of India, or the island of Ceylon, should be removed from the island, without his first having been found guilty, by the verdict of a jury, of some offence to which the punishment of banishment from the island is attached by law. 2dly. To prohibit the Governor of Ceylon from any longer exercising the power, which he has hitherto exercised, of ordering any native of the island to labour for Government by force, and to direct that all labour performed for Government by natives shall be paid for in the same manner as if they performed that labour for any private individual; the above power being often productive of the greatest hardships, and the greatest injustice to the natives, and being capable of being made use of as a means of depriving such Europeans or others as may settle on the island of a part or the whole of their native labourers, at a moment when the services of those labourers may be most essential to the success of their agricultural, manufacturing, and commercial speculations. 3dly. To declare the ports of

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of Trincomalee, Point de Galle, Colombo, and Jaffna, free ports. 4thly. To repeal such parts of the Governor's instructions as authorize him to make legislative acts for the government of the island by his mere will and pleasure, and without the check or control of any other person in the island, and thereby enabling him, if he thinks proper, virtually, though not avowedly, to defeat even the provisions of His Majesty's charter of justice for Ceylon, which is issued under the Great Seal of England. 5th. To frame, by Act of Parliament, a free constitution for all the inhabitants of the island of Ceylon, founded upon the principles of the British constitution, but adapted to the religion, the customs, and manners of the natives, as well as to the peculiar circumstances of the country. 6th. To frame a short and a clear code of laws, divested of all technical language, for the use of the inhabitants of Ceylon. 7th. To advise some of the leading merchants in the principal towns which have an interest in the agricultural improvement of, and trade with, the island of Ceylon, to form chambers of commerce, or committees, for the purpose of watching over and protecting, in England, the interest of such British European subjects as may embark their capital in speculations upon that island.

The reasons urged by Sir Alex. Johnston for establishing such committees, are contained in the printed account, of which the following is a copy:

"A few months ago, copies of official documents were published, from which it appeared that the settlement of Europeans in Ceylon had been allowed, at the instance of Sir A. Johnston, the then Chief Justice of the colony. It may be useful to state, that at the time Sir A. Johnston proposed to His Majesty's Ministers to take off the restrictions against Europeans holding land in Ceylon, which restrictions were taken off by the proclamations of 1810 and 1812, he was perfectly aware that this measure would not be attended with the full benefits which might be derived from its adoption, unless those persons who are connected with the trading and manufacturing interests of England were made fully acquainted with the real state of the island of Ceylon, and unless they were induced to exercise a salutary superintendence over the interests of the several capitalists who might determine, in consequence of this measure, to settle upon that island, but who were very unlikely to succeed in their speculations, unless they could obtain in this country, before they embarked in those speculations, such information as might be necessary to enable them to judge of the prudence or advisability of embarking in them; and unless they could also, after they once had embarked in them, be certain, in case of their meeting with opposition on the island, of receiving, in all cases in which they were really wronged, the support of the trading and manufacturing interest of England, both in their endeavours to obtain redress, and to secure for themselves the adoption of such a policy, and such a system of laws for the regulation of the agriculture, manufactures, and trade of the island, as might enable them to avail themselves, to the fullest extent, of the local capabilities of the island, and of the advantageous and free use of their capitals.

"In order to secure for them the certainty of being able to procure such information as they might require before they determined upon such speculations, and the equal certainty of obtaining redress in England, if wronged in the colony, after they once had embarked in such speculations, Sir Alexander proposed that a committee should be formed in England of some of the most respectable and best informed of the persons who were connected at Liverpool, Glasgow, Manchester, and other places, with such portions of the trading and manufacturing interests of England as were the most interested in the trade and improvements of all branches of trade and manufactures in India, and that that committee should adopt such measures as are necessary to enable it to obtain the most accurate information that could be procured of every thing relative to the island of Ceylon. Such a committee will be a great benefit—

"1st. To the persons who embark their capital in speculations on the island of Ceylon. 2d. To the native inhabitants of that island. 3d. To the people of Great Britain. 4th. To the Government of Great Britain.

"1st. To

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" 1st. To the persons who embark their capital in speculations on the island of Ceylon.

" It will enable all such persons to obtain, without expense, information upon which they can rely, as to all the following particulars:—As to what capital they ought to embark in any speculation; what profit they may fairly expect; what dangers or opposition they are likely to encounter; and what assistance they ought beforehand to secure from Government; as to the nature of the climate, the soil, the mineral and vegetable productions of the country; as to the extent, the description, and the character of the population; as to the price of labour, the state of machinery, and the different sorts of implements in use in agriculture and manufactures; as to the possibility of improving such implements, or of substituting in their room the machinery used for similar purposes in Europe; as to the facility, where labourers are not to be had in Ceylon, of getting them either from the peninsula of India or from China; as to the practicability of substituting for human labour, where human labour cannot be procured, either the labour of oxen or that of elephants; as to the nature of the religious and other prejudices of the people, and the effect which those prejudices are calculated to have upon their habits of thinking with respect to different descriptions of labour, manufactures, and trade. It will also enable all such persons, in case of any dispute, either with the local government of the island, or with persons of influence on the island, to bring their complaints before His Majesty's Ministers, through the committee, with much more effect than they could otherwise do, in consequence of His Majesty's Ministers being fully aware that those complaints had been first of all examined by merchants of respectability in this country, who were thoroughly acquainted with the subject; who viewed the circumstances in which the colonists were placed in Ceylon with with the good sense, enlightened ideas, and liberal feelings of British merchants; and who, provided they approved of the conduct and proceedings of the colonists in Ceylon, would give their strenuous support to those colonists, and would excite in their favour the sympathy and support of the whole trading and manufacturing interests of England.

" 2d. This committee will be a benefit to the native inhabitants of the island of Ceylon, by encouraging capitalists from England to employ their capital with safety and with profit in agriculture, manufactures, and trade in that island, and thereby making the island what it is admirably fitted for by its local situation, the great entrepôt of trade between Europe, America, Africa, Arabia, and the western coast of the peninsula of India on the one side, and China, the Eastern Archipelago, all the countries on the eastern side of the Bay of Bengal, Bengal itself, and the coast of Coromandel, on the other side.

" 3d. This committee will be a benefit to the people of Great Britain, by rendering the people of Ceylon active, rich, and prosperous; by increasing the variety and quantity of their exchangeable produce, their demand for the manufactures and other produce of Great Britain, and thereby enabling them not only to defray the expenses of their own local government in particular, but also to contribute in some degree to the discharge of the expenses of the Government of Great Britain at large.

" 4th. This committee will be a benefit to His Majesty's Ministers, by enabling them to ascertain, from a body of merchants in this country, as well as from a body of merchants in Ceylon, who are better acquainted, both from their knowledge of the general principles of commerce and of the local circumstances of the island, than any other persons can be, with what the real wants of the island may be; what improvements in the agriculture, manufacture and trade of the island can be made by Government; what encouragement it is absolutely necessary and advisable that Government should give, in order to carry into effect these improvements; what laws now in existence are prejudicial to the agriculture, manufacture and trade of the island; what laws ought to be abolished; what, if any, substituted in their room. It will also enable His Majesty's Ministers not only to adopt, with benefit to the country, such measures as they may, under the advice of the committee think proper to adopt; but it will, through the influence it must possess in all the great manufacturing and trading towns of England, render all such measures popular by explaining to the

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the trading and manufacturing interest of England the advantages they are likely to derive from the adoption of those measures; it will also enable Government, in cases of complaints being made to them by the colonists and other speculators in Ceylon against the local government or persons of influence on that island, to know what decisions they ought to come to upon the subject, consistently with their own rights and the interests and feelings of the people of the island of Ceylon."

In consequence of the late Lord Londonderry having given up the office of Secretary of State for the Colonies, in the latter end of 1809 or beginning of 1810, although the instructions to the Governor of Ceylon against allowing Europeans to settle upon that island were repealed, and the proclamations, of which we have given copies, were published by the Government of Ceylon, none of the other measures, mentioned by us as having been recommended by Sir Alex. Johnston, were subsequently carried into effect; and few, or no European British subjects have availed themselves of the terms held out by the Ceylon government in the proclamations of 1810 and 1812, it being obvious that no British subject could prudently venture to embark a large capital in that island, without enjoying the security which the measures proposed by Sir Alex. Johnston were calculated to give him.

(L.)

PAPER, containing Copies of a Letter from Mr. Ricketts, the Agent for the East Indians to Sir Alexander Johnston, on the 6th May 1830, and Sir Alexander's Answer, explaining to him the line of policy which he would advise the British Government to adopt with respect to all the East Indians in British India.

Copy of a Letter from Mr. *Ricketts* to Sir *Alexander Johnston.*

"13, Brooksby-street, Liverpool Road,

"Dear Sir, 6th May 1830.

"YOU lately did me the honour to express a wish to peruse the East-Indian's petition to Parliament, with which I have been deputed to England by my countrymen in India; and it of course gave me great pleasure to put a copy into your hands. Your are now, doubtless, made acquainted with the civil and political disabilities complained of in the petition.

"Aware, as I am, of your philanthropic efforts in behalf of the native burghers at Ceylon, the descendants of European fathers, during your residence as Chief Justice and President in Council on the Island, I shall esteem it a particular favour if you will kindly seize a moment of leisure to let me know the practical bearings and results of the measures pursued by you, and whether they turned out to be prejudicial in any way to the interests of the local government.

"I beg you will excuse my troubling you on the subject; and the best apology I can offer, and which I am sure you will as readily accept, is the vast importance of the public cause in which I am engaged.

"I have the honour to be,

"Dear Sir, your very obedient Servant

"*John W. Ricketts.*"

"Dear Sir, "19, Great Cumberland Place.

"I HAVE the honour to acknowledge the receipt of your letter of the 6th of May 1830. In answer, I beg leave to assure you that I shall with pleasure explain to you the opinions which I entertain upon the subject to which you refer; and the different measures which, in consequence of those opinions, I adopted while I was Chief Justice and President of His Majesty's Council in Ceylon.

"I have

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" I have always been of opinion that, in policy, His Majesty's Government ought to show the most marked respect to all persons on Ceylon, who are either descended from Europeans, or who bear any resemblance in features, manners, dress, religion, language and education to Europeans, and thereby constantly associate in the minds of the natives of the country an idea of respect and superiority with that of a European, and with that of everything which is characteristic of or connected with a European.

" That in justice it ought to do every thing in its power to place the native burghers on that island in a situation which may enable them to acquire the respect and esteem of their countrymen, and which may make it their interest and their wish as well as their duty to support the authority and promote the views of the British nation. That it ought to encourage them to improve their moral character and to cultivate their understanding, by affording them the same prospect as Europeans enjoy of attaining, if they desire them, situations of the highest honour and of the greatest emolument in all the different departments of the state.

" And that it ought to consider the exclusion by law, for no fault of their own, but merely on account of their complexion of so valuable a class of His Majesty's subjects, as unjust and impolitic, as systematically degrading them in the eyes of their countrymen, and as subjecting them on every occasion, in private and in public, amongst Europeans and amongst natives, however respectable, however well educated, and however deserving they may be, to the most unmerited contumely and the most painful mortifications.

" I have also always been of opinion, that His Majesty's Government ought, not only with a view to the religious, moral and political instruction of the people, but even with a view to the increase of its own strength and authority on Ceylon, to adopt measures which may gradually introduce amongst the inhabitants of that island such portions of the arts and sciences, and of the moral and political institutions of Europe, as may be applicable to the situation of the country, and may ultimately assimilate the character and feelings of the people of India to the character and feelings of the people of Great Britain.

" That it ought to consider the native burghers on the island of Ceylon as valuable auxiliaries in carrying into effect all such measures, and in bringing about all such changes as are calculated to improve the moral and political character of the natives of that island.

" And finally, that it must, so far from diminishing its popularity and endangering its authority, increase the former and affirm the latter by exalting the character and conciliating the affections of all the native burghers who are settled in different parts of the island, who, from the circumstances of their birth, are thoroughly acquainted with the language, habits, manners, usages and prejudices of the natives; and who, from the circumstances of their descent, their features, their names, their religion, their laws, their education, and their language, must, if wisely protected, feel themselves bound by every tie of affection and interest to adhere at all times to the British Government, and to consider their importance, if not their existence in society, as depending upon the continuance and strength of the British authority in India.

" Entertaining these opinions, I felt it to be my duty, as soon as I became Chief Justice and President of His Majesty's Council on Ceylon, to advise His Majesty's Government to place every descendant of a European on that island, whatever his complexion might be, precisely upon the same footing as a European; to look upon him as having the same rights and privileges, as subject to the same criminal and civil law, and as eligible to the same appointments in every department of government. Upon my recommendation native burghers were appointed to the offices of registrar, deputy registrar, keeper of the records, advocates, proctors, notaries of the Supreme Court, members of the landrards, secretaries of the provincial courts, sitting magistrates, justices of the peace, and superintendents of the police, to the office of proctor for paupers, a situation of great responsibility, created by Government at my suggestion, for the specific purpose of protecting the rights of paupers and slaves, to that of deputy advocate fiscal, and, under certain circumstances, even to that of acting advocate fiscal, an officer next in rank in the Supreme Court to the chief and

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puisne justice, and discharging duties in that court of great trust and importance to the safety of the Government and the tranquillity of the country.

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" In consequence of the adoption by government of this line of policy, the native burghers on the island of Ceylon acquired a high value for character, and a powerful motive for improving their understanding, for cultivating every branch of knowledge, for making themselves acquainted with the arts, the sciences, the manufactures, and the agriculture of Europe; they enjoyed a further opportunity of displaying their talents and extending their influence amongst their countrymen, and they felt a pride in exerting that influence in favour of the British Government, and in promoting amongst the natives of the island all such measures as were calculated to improve the state of the country, and to ameliorate the condition of the people.

" My experience on the island of Ceylon led me, many years ago, to believe that the only way of effectually and permanently improving the condition of that island is for Parliament, after having instituted in England a full and public inquiry upon the subject, to relieve its agriculture, its manufactures, its trade, and its population, from all unnecessary and impolitic restrictions; to open its ports to vessels of all nations; to encourage Europeans to settle on the island, and apply their capital, their skill, and their industry to the cultivation of the country; and solemnly to guarantee, by an Act of Parliament, to the inhabitants of every description a free and a liberal system of government, founded on the principles of the British constitution, but adapted to the peculiar circumstances of the island, and to the peculiar manners, feelings and prejudices of the people. I therefore felt it to be my duty, in order to prepare the people for such a change, and to satisfy the Legislature of Great Britain that the natives of India, if properly treated, are capable of appreciating the value of freedom, and exercising all the rights and privileges of free men, to introduce such measures amongst the natives of Ceylon as were calculated to enlighten their understanding, to raise the standard of their moral feeling, to give them a value for character, and a respect for the rights of their fellow-creatures, to vest them with a power of making and administering the laws by which they were to be governed; to encourage amongst them a calm and enlightened discussion of all questions, moral as well as political, in which either their spiritual or their temporal welfare might be concerned; to remove all religious jealousies, by removing all political disabilities arising out of a difference of religious persuasions; to make them acquainted with the history of their country, with the nature of the changes, religious and political, which it had undergone, with the causes of those changes, and the effects which they had produced upon the happiness of the people and the prosperity of the country, and with the great advantages which they were capable of deriving from the introduction amongst them of European settlers and of European capital, arts, sciences, skill and manufactures; and to create amongst them, by means of a liberal and well-directed press, a public whose opinion might operate as a protection to all those who acted as the benefactors, and as a check upon all those who act as the oppressors of their country, and might thereby become a powerful engine for establishing amongst them a free, a mild and an economical government.

" In all these measures the native burghers took a most active part, and displayed the most enlightened and the most disinterested feelings in the uniform and efficient support which they afforded me, and acquired by the conduct which they observed in unanimously passing, of their own accord, a resolution emancipating all children born of their slaves after the 12th of August 1816, the highest credit, not only from his Majesty's Government, but also from the members of the African Institution, whose opinion is publicly recorded in the 11th Report of their proceedings in the following words: 'That the grateful acknowledgments of the society are due to them for their general adoption of this important change in the condition of their country, and for the bright example which they have taken the lead in exhibiting to the world of fixing a period for the extinction of the state of domestic slavery, an example which the directors trust will be speedily followed whenever it may be done with safety; but whether this hope shall be realized or not, it will never

never be forgotten that the inhabitants of Colombo were the first of the British colonists to act upon this grand, noble, liberal, and disinterested principle, and that they will ever deserve the best thanks of every individual who has at heart the advancement of the happiness of mankind and the improvement of human nature.'

" From the various communications upon literary, moral, and political subjects which I frequently received while on Ceylon from East-Indians descended from European fathers, in every part of India, from the frequent opportunities which I enjoyed during the two journies, the first in 1809, the last in 1817, which I made by land from Cape Comorin to Madras and back again, of becoming myself personally acquainted with many gentlemen of that class in the peninsula of India, and from the very high opinion which I received of the talents and acquirements of the whole class from the late Colonel Mackenzie, who while Surveyor-General of India employed a great many young men of that class, as well to survey the country as to collect for him the most valuable materials relative to the history of the people, I feel no doubt whatever that, were the Legislature of Great Britain to adopt, with respect to the East-Indians throughout the continent of India, the same line of policy which his Majesty's Ministers had at my suggestion adopted with respect to the native burghers throughout the Island of Ceylon, the British government at large would derive the same advantages which the Ceylon government in particular have derived from the talents, the zeal, and the loyalty of one of the most respectable and of the most useful portions of His Majesty's subjects in Asia. I was so convinced of this, and of the justice of extending to all East-Indians descended from European fathers on the continent of India the advantages of the system of policy observed by his Majesty's Government towards the native burghers of Ceylon, that I submitted, when I was in England in 1810, to the Lord Londonderry a plan upon the subject which secured his approbation, and which, had I remained on Ceylon, I should have advised His Majesty's Ministers to carry into effect under the sanction of a special Act of Parliament.

" The object of this plan was to afford the whole class of East-Indians descended from European fathers in Asia a favourable opportunity of raising their moral and political character in the estimation of the people of Europe and Asia, by inducing the most distinguished of that class, from every part of the continent of India, to co-operate with the most distinguished of the native burghers from every part of the island of Ceylon, in establishing an extensive settlement of their own in the northern provinces of that island.

" According to this plan a free constitution, and every right and privilege possessed in England by the most favoured European-born British subject, were to be guaranteed to all members of this settlement by the Legislature of Great Britain.

" The government lands in those provinces which, though at present uncultivated and depopulated, were in former ages most highly cultivated and most densely peopled, were to be granted by His Majesty's Government, in perpetuity, and upon the most liberal terms, to such of them as might be willing to cultivate them. The greatest encouragement was to be afforded them in agriculture, manufactures, and commerce. The only two navigable channels through the long ridge of sand-banks extending from the north-west part of the island of Ceylon, to the south-east part of the peninsula of India, and known by the name of ' Adam's Bridge,' were to be deepened so as to admit the passage through them of vessels of a large burden. The immense tank or reservoir of water, called the ' Giant's Tank,' and many other large tanks, were to be repaired at the public expense. An order of merit was to be instituted, in which each member of the settlement might receive a rank and a title according to the quantity of land which he had brought into cultivation, or according to the degree of improvement which he had made in any branch of useful science or useful manufacture. Elementary schools were to be established in the country for the education of their children; a college, with professors in every department of science and literature, was to be founded in the town of Jaffna, for their use and instruction.

" A certain number of the boys who had distinguished themselves the most at the schools were to be annually placed in the college; and a certain number of those who had distinguished

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distinguished themselves the most at the college were to be annually sent to England, and after a short course of education in that country, adapted to the professions for which they were intended, to receive from the British Government in India appointments according to their respective talents or dispositions, either in the army, the navy, the law, the church, or the civil service.

" I am confident that in such a settlement, situated within twenty miles of the continent of India, near enough to that continent to admit of their constant intercourse with their friends and relations, but far enough from it to be completely removed from the influence of local prejudices, all the East-Indians descended from European fathers would enjoy the most favourable opportunity, under the protection of a free and liberal constitution, and under the immediate care and superintendence of the British Parliament, of developing their moral character, of displaying their capacity to enjoy all the free institutions and privileges of Englishmen, and to discharge, with credit to themselves and benefit to their country, all the duties of the highest departments of Government; of acquiring themselves, and of communicating to the natives of the country, all the arts, the sciences, and the literature of Europe; and of gradually but effectually dispelling from the minds of the people of Europe and Asia the unmerited prejudices which, owing to circumstances not under their control, have hitherto prevailed against a numerous class of His Majesty's subjects, who of all others in Asia are, on account of their European descent, the most naturally and the most especially entitled to the protection and sympathy of the British Parliament and the British nation.

" I have the honour to be, dear Sir, your faithful servant,

" *Alex. Johnston.*"